IN THE SUPREME COURT OF THE UNITED STATES.

APPEAL No. 551.
CROSS-APPEAL No. 552.

CAUSE ORIGINALLY

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SEVENTH CIRCUIT.

OCTOBER TERM, A. D. 1908.

No. 1534

THE UNITED STATES OF AMERICA,
Appellants,

vs.

OBERLIN M. CARTER, et al.
Appellees.

Appeal from the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

BRIEF, AND BRIEF OF EVIDENCE ON THE MERITS.

MARION ERWIN,
Special Asst. Atty. Gen'l.,
Solicitor for Appellants.

Chicago:
The Gunthorp-Warren Printing Co.
1908

AUTHORITIES CITED.

On admissibility in evidence of papers from Box B-31. (Brief, p. 35.)

Opinion of Atty. Gen. Griggs in Carter's Case, 22, Opinions 589.

On manner of proving conspiracy and fraud. (Brief, p. 37.)

Archbold's Criminal Practice and Pleading (Waterman's Ed.), 1054

Rea v. *Missouri*, 17 Wall, 543.

The Slavers, 2 Wall, 401.

Castle v. *Bullard*, 23 How., 187.

On requirement of sufficient public advertisements. (Brief, pp. 122–123.)

Act of Congress, Aug. 11, 1888, and Sup. R. S., p. 610.

Army Regulations of 1889.

That Army Regulations have force of law. (Brief, p. 122.)

U. S. v. *Freeman*, 3 How., 367.

Gratiott v. *U. S.*, 4 How., 117.

Kurtz v. *Moffit*, 115 U. S., 503.

That no officer, whose motives in doing so are improper, is relieved from even criminal responsibility for inducing his superior to approve improper things. (Brief, p. 139.)

Faust v. *United States*, 163 U. S., 452.

Statement of result of examination of voluminous facts and figures admissible in evidence. (Brief, p. 553.)

Burton v. *Driggs*, 20 Wall, 136.

Pocket memorandum books not admissible in evidence. (Brief, pp. 559–569.)

Taylor on Evidence, Vol. 2, p. 463 (12).

Bates v. *Preble*, 151 U. S., 559.

On the nature of the charges on which Carter was convicted. (Brief, p. 580.)

Carter v. *McClaughry*, 183 U. S., 365.

On the rules of law applicable to following diverted trust funds. (Brief, pp. 643–644.)

City of Spokane v. *First Natl. Bank*, 68 F. R., 982.

Natl. Bank v. *Insurance Co.*, 104 U. S., 54.

Newton v. *Porter*, 5 Lans., 416.

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Shaler v. *Trowbridge*, 28 N. J. Eq., 595–603.

17 A. & E. Ency. Law, p. 475.

On the admissibility of Dr. F. P. Solley's testimony as to what R. F. Westcott said to him while Westcott was in possession of the assets, disclaiming title in himself, Carter now claiming title under Westcott by an alleged gift made subsequent to Westcott's disclaimer. (Brief, p. 649.)

1 Greenleaf on Evidence, 15th Ed., Sec. 109.
Boher v. *Humphrey*, 101 U. S., 499.
Henderson v. *Wanamaker*, 49 U. S. App., 177.
Millen v. *Buckner*, 139 U. S., 409.
~~28 A. & E. Ency. Law, p. 1128.~~

On admissibility of R. F. Westcott's testimony to charge full notice to I. S. and L. D. Carter, claiming a lien on assets for services since rendered, and incidentally as against O. M. Carter, seeking by conspiracy with them to cover up assets under their claim of innocent purchasers, without notice. (Brief, p. 654.)

The Lulu, 10 Wall, 201.
McClure v. *Township of Oxford*, 94 U. S., 432.
Livingston v. *Maryland Ins. Co.*, 7 Cranch, 538.
~~Oliver v Piatt 3 How 418.~~
~~Oliver v. Piatt, 3 How. 410.~~
~~28 Ar. Ency Law p. 1128~~

On the duty of the court to discredit and disallow Carter's present claim that a number of the bonds included in the receipt of Oct. 29, 1897, were bonds which he had owned for several years as part of his wife's alleged estate, and which he now alleges had time and again been recognized by Westcott as Carter's, in repeated settlements, in view of the statement in his answer, filed February, 1902, denying that he had ever owned said bonds, until given him as an original donation by Westcott at the time of said receipt of October 29, 1897. (Brief, p. 834.)

Henderson v. *Louisville, etc., R. R.*, 123 U. S., 64–65.

On the duty of army officers to correctly report every absence from their stations.

Regulations printed on back of each report, and volume of regulations in evidence. (Brief, pp. 563–564.)

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(2) Commencing from division of profits from contracts of Sept. 16, 1892, and Oct. 22, 1892, there was a division by thirds between B. D. Greene, J. F. Gaynor and O. M. Carter, every month when Carter was in funds to pay the contractors, or as soon as he did disburse to the contractors 551
(3) That the aggregate of Carter's thirds of the profits from commencement of division by thirds, Jan. 3, 1893, to July 6, 1897, was $722,528.02 552

(4) Majority of these payments made to Carter directly or to Carter through R. F. Westcott, were made by currency deposits aggregating $578,299.86 552
(5) From 1891 to April 1893, the currency deposits were made in Carter's individual account 552
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IN THE SUPREME COURT OF THE UNITED STATES.

APPEAL No. 551.
CROSS-APPEAL No. 552.

CAUSE ORIGINALLY

IN THE

Circuit Court of the United States

NORTHERN DISTRICT OF ILLINOIS.

THE UNITED STATES OF AMERICA *vs.* OBERLIN M. CARTER et al.	IN EQUITY.

What Constitutes the Record in this Cause.

(A) The pleadings, agreements, orders and decrees on file in the U. S. Circuit Court, Northern District of Illinois. Among others, various orders appointing Richard H. Wyman, Geo. E. Burgoyne and C. A. Parsons special Examiners to take evidence, and order appointing W. M. Booth master to take evidence and report on certain matters. Vol. 1

(B) The evidence reported by Richard H. Wyman and Geo. E. Burgoyne, Examiners, will be referred to for brevity as the "Wyman Record." It consists of:

capital stock issued by Propeller Tow Boat Company, of Savannah, etc. Verified by affidavit of John F. Paulsen.

Vol. 1, Page 5: Stipulation as to admitting in evidence Exhibit 450 (Wyman), extracts from books of Kanawha Valley Bank, Charleston, West Virginia, showing sale of certain securities with receipts and statements, verified by affidavit of John L. Dickinson.

Vol. 1, Page 30: Stipulations that E. I. Johnson hold as custodian original checks offered and specified in Exhibit 538 (Wyman) subject to inspection, without having same copied in record.

Vol. 1, Page 34: Same stipulation as to custody of original checks specified in Exhibit 539 (Wyman).

Vol. 1, Page 46: Same stipulation as to custody of original checks and deposit tickets specified in Exhibit 583 (Wyman).

Vol. 1, Page 50: Same stipulation as to custody of R. F. Westcott's original check-stub books, Exhibit 550 to 573 (Wyman).

Vol. 1, Page 79: Same stipulation as to tri-monthly reports from which Exhibits 369 and 370 (Wyman) compiled.

Vol. 1, Pages 83-4: Stipulation as to admitting in evidence Exhibit 593 (Wyman) account of J. F. Gaynor with American Exchange National Bank, New York, verified by the affidavit of A. K. de Guiscard.

Vol. 1, Page 84: Stipulation as to admitting in evidence Exhibit 594 (Wyman), account M. W. Carter with Garfield National Bank, New York, verified by affidavit of Walter P. Hutchinson.

Vol. 1, Pages 158-160: Stipulation as to waiving proof by stenographer of what R. F. Westcott testified before Commissioner Shields, in Removal Proceedings in New York. The record of R. F. Westcott's testimony certified by the

Commissioner offered by Government taken as proved, but defendants reserving objections to the admission of Westcott's testimony on grounds thereafter to be stated and stated Wyman Vol. 9, p. 4561.

Vol. 1, Page 353: Stipulation as to admitting in evidence for defense, affidavits of John D. Clarke and Patrick Roche, marked Defendant's Exhibits A2 and B2 (Wyman), as if taken under examination and cross-examination.

Vol. 2, Page 89: Stipulation as to admission in evidence of copy of will of R. F. Westcott.

Vol. 2, Page 98: Stipulation as to E. I. Johnson holding the original documents of which copies put in record by Examiner.

Vol. 2, Page 153: Stipulation that counsel may refer in brief to New York statute as to inheritance law.

Vol. 2, Page 394: Stipulation waiving proof of Court Martial and Board of Officers records, in custody of Mr. E. I. Johnson.

Vol. 3, Page 900: Stipulation that printed copy of the direct testimony of O. M. Carter (marked Vol. 2) be used in the record in lieu of typewritten report of same.

Vol. 3, Pages 1099-1107: Stipulation that exhibits, etc., be left in custody of E. I. Johnson.

Vol. 3, Pages 1355-6: Stipulations as to reports of Max H. Whitney of assets received being in evidence.

Vol. 3, Page 1419: Stipulation as to admitting in evidence Exhibit 618 (Wyman). Statement of safe deposit boxes rented, etc., from Safe Deposit Co., of New York. Verified by affidavit of W. A. Mitchell.

Vol. 3, Page 1426: Stipulation as to admitting in evidence Exhibit 619 (Wyman). Statement of payment of Beirne Gordon notes. Verified by affidavit of Bierne Gordon.

Vol. 14 P. 6284

Vol. 3, Page 1547: Stipulation as to admitting in evidence Exhibit 598 (Parsons). Statement of payment of check for $7,953.22 by Union Trust Co., New York. Verified by affidavit of Tylee W. Hartshorne. Also Exhibit 621 (Wyman). Statement of division of Orange, N. J., property, being initialed by J. H. Paul.

Vol. 14 P. 6286

Vol. 14 P. 6447

Vol. 3, Page 1798. Stipulation as to admitting in evidence Exhibit 624 (Wyman). Statement relative to collection of coupons Jan. 11, 1894, by Union Trust Co. of New York. Verified by affidavit of Tylee W. Hartshorne.

Vol. 14 P. 6448-50

Vol. 3, Pages 1799-1803: Stipulation as to admitting in evidence Exhibit 625 (Wyman). Statement relative to sale of check book, and shipment to Carter by Union Trust Co., of New York, of cancelled checks. Verified by affidavit of Tylee W. Hartshorne.

Vol. 14 P. 6449-50

Vol. 3, Page 1802: Stipulation as to admitting in evidence Exhibit 626 (Wyman). Statement as to receipt from Express Co. in Savannah and reshipment to Carter in New York, of package from Union Trust Co. of New York.

Vol. 17 P. 7938

Vol. 5, Page 1341: Stipulation as to admitting in evidence Exhibit 632 (Wyman). Statement relative to $15,000 check dated May 13, 1893, R. F. Westcott on Union Trust Co., New York. Verified by affidavit of Tylee W. Hartshorne.

Vol. 18 P. 8797

Vol. 9, Page 4471: Stipulation as to admitting in evidence Defendant's Exhibits Nos. 125 and 126 (Wyman). Affidavits of W. Bayard Cutting and H. R. Duval.

Vol. 18 P. 8806

Vol. 9, Page 4486: Formal written stipulation of December 20, 1902, as to the admission in evidence of (1) Certain parts of the evidence taken before Commissioner John A. Shields in New York, on proceedings to remove Greene and Gaynors to Georgia. (2) Certain parts of Court Martial Record. (3) Certain parts of Board of Officers Record. This stipulation referred to again under heads of

Shield's Record, Court Martial Record, and Board of Officers' Record, for details.

Vol. 9, Page 4515: Stipulation as to Defendant's Exhibit 131 as to "Regulations for the Government of the Corps of Engineers, 1889," excluding memoranda of Carter thereon.

Vol. 9, Page 4547: Stipulation, that during the period in controversy, Capt. Carter made monthly reports of operations of same general character as Defendant's Exhibit I (Shields).

Vol. 9, Page 4552: Stipulation as to Plaintiff's Exhibits 368 and 369 (Shields). Plaintiff's Exhibit 8 Court Martial, and similar compilation, Board of Officers, being compilation from Reports of Assistant Engineers and Inspectors, Savannah District, in regard to certain work done under contracts 4960, 6515 and 6517.

Vol. 9, Page 4560: Stipulation that printed copy of Shields' Record of testimony and exhibits certified by Commissioner, may be used in lieu of typewritten copy, the original record to be produced if called for, if question arises as to accuracy.

Vol. 9, Page 4560: Stipulation that copies of papers set out in Court Martial Record and Board of Officers Record, may be used in lieu of originals. The originals to be produced for inspection if question arises as to accuracy.

Vol. 9, Page 4561: Stipulation that if testimony of R. F. Westcott before Commissioner Shields be held competent for any purpose, Complainant may introduce copy of it as certified by Commissioner Shields.

Vol. 9, Page 4617: Stipulation as to admission in evidence of entry as copied in record, from Ledger of account of J. F. Gaynor, on books of American Exchange National Bank, New York. "In case of overdrafts on account of John F. Gaynor, charge his checks to W. T. Gaynor."

Vol. 18 P8900

Vol. 9, Page 4637: Stipulation as to attaching to record for inspection, Complainant's Exhibit 655, being Gillette's memoranda from Carter's diaries.

Vol. 18 P8924

Vol. 9, Page 4674: Stipulation, that certain deposits in account of R. F. Westcott with Union Trust Co., Feb. 18 and March 1, 1893, were checks given to R. F. Westcott, on account of purchase by Robt. P. McDougall of premises 151 Highland avenue, Orange, N. J.

Vol. 18 P8924

Vol. 9, Page 4674: Stipulation as to admission of affidavit of Edward V. W. Rossiter, First Vice President of New York Central, etc., R. R. Co., with interpretation of clause in affidavit.

Vol. 18 P8929

Vol. 9, Page 4680: Stipulation as to age and mental condition of Mr. C. C. Clark, of New York Central, etc., R. R. Co.

Vol. 18 P8936

Vol. 9, Page 4697: Stipulation as to corrections in Defendant's Exhibits 98 and 96A to 96G, inclusive, and for use of printed copy in lieu of typewritten, with reference to differences.

Vol. 18 P8937

Vol. 9, Page 4698: Stipulation as to Government Exhibit 661, list of securities appearing on Carter's letterpress copy book No. 7, page 104.

(E) SHIELDS' RECORD.

The record of the testimony and exhibits taken in New York before Commissioner John A. Shields, has been certified and offered in two forms, to-wit: the original typewritten copy with exhibits attached, and a printed copy of same, with exhibits attached and referred to.

Vol. 18 P8948

On page 4560 of Wyman Record, is a stipulation of counsel that the printed copy of the Shields' Record of testimony and exhibits certified by the Commissioner, may be used in lieu of typewritten copy, the original record to be produced if

called for, if question arises as to accuracy, etc. (See also Wyman Vol. 9) p. 4490. We will refer to the printed record for convenience, which consists of the following:

SHIELDS' RECORD (PRINT).

Vol. 1, Pages 1 to 850 (Print).
Vol. 2, Pages 851 to 1686a (Print).
Vol. 3, Pages 1687 to 2720a (Print).
2 Volumes of Exhibits attached.

ADDITIONAL STIPULATIONS AFFECTING SHIELDS' RECORD.

By formal stipulation of Dec. 20, 1902 (Wyman Vol. 9), p. 4487, the following testimony and evidence taken in the Greene-Gaynor removal proceedings before Commissioner Shields were to be admitted as if taken on examination and cross-examination in this cause:

(1) Oral testimony of witnesses (on lists hereinafter referred to) except testimony of Edward I. Johnson, and Robert F. Westcott. (The testimony of E. I. Johnson was retaken in this cause, and there was special agreement as to testimony of R. F. Westcott hereafter referred to.)

(2) Exhibits hereafter referred to by number and description on list served on opposite counsel (Wyman Vol. 9), pp. 4490 and 4560. Exhibits and oral testimony in the printed volumes to be used in lieu of originals. But original documents referred to to be held subject to inspection and produced if called for, and to be considered part of record.

(3) (Wyman Vol. 9) p. 4489. Objections made by the United States to admission of evidence to be preserved. Defendant's objections made before Shields withdrawn, and defendants to make objections *de novo*.

(Wyman Vol. 9) p. 4493. All objections of defendants to any of the said evidence should be served upon complain-

ant's counsel at time of serving list of said witnesses whose testimony was to be used.

Additional objections of complainant to defendant's evidence to be served on defendant's counsel.

(4) It was further provided in said formal stipulation of Dec. 20, 1902, that if the oral testimony of R. F. Westcott so taken before Commissioner Shields is offered by either party, it shall be subject to all objections which would be good against its admission, had said agreement not been made.

(5) There was a subsequent stipulation (Wyman Vol. 9) p. 4561: That if the testimony of R. F. Westcott before Commissioner Shields should be held competent for any purpose, complainant may use copy of it as certified by Commissioner Shields without further proof of the deposition. Same stipulation in effect (Wyman Vol. 1), pp. 158-160. The deposition of R. F. Westcott was tendered by the Government (Wyman Vol. 1), p. 159, and (Wyman Vol. 9), p. 4497, and objected to by defendant's counsel as not having been taken in a proceeding to which Carter was a party. (Wyman Vol. 3), p. 1574.

(6) Complainant's Exhibit 643 (Wyman Vol. 12 of Exhibits) contains the list of witnesses from the Shield's Record, whose testimony therein the Government introduces, served upon defendant's counsel per agreement of Dec. 20, 1902. Complainant's Exhibit 642 (Wyman Vol. 11 of Exhibits) contains the list and description of the Exhibits from the Shields Record, which the Government introduces, served upon defendant's counsel per agreement of Dec. 20, 1902.

(7) Defendant's Exhibit 128 (Wyman Vol. 9), p. 4503, refers to the list of witnesses from the Shields Record, whose testimony therein the defendant introduces, served upon the Government's counsel per agreement of Dec. 20, 1902.

(8) Defendant's Exhibit 129 (Wyman Vol. 9 Vol. 12 of Exhibits) contains the list and description of Exhibits from the Shields Record which the defendants introduce, served upon the Government's counsel per agreement of Dec. 20, 1902.

(F) **COURT MARTIAL RECORD.**

The original Court Martial Record which by agreement is held in custody of Mr. Edward I. Johnson, subject to inspection, consists of the following type-written volumes:

Vol. 1, Pages 1 to 211.
Vol. 2, Pages 212 to 469.
Vol. 3, Pages 470 to 714.
Vol. 4, Pages 715 to 929.
Vol. 5, Pages 930 to 1162.
Vol. 6, Pages 1163 to 1395.
Vol. 7, Pages 1396 to 1598.
Vol. 8, Pages 1599 to 1856.
Vol. 9, Pages 1857 to 2067.
Vol. 10, Pages 2068 to 2273.
Vol. 11, Pages 2274 to 2510.
Vol. 12, Pages 2511 to 2764.
Vol. 13, Pages 2765 to 2997.
Vol. 14, Pages 2998 to 3266.
Vol. 15, Pages 3267 to 3465.
Vol. 16, Pages 3466 to 3704.
Vol. 17, Pages 3705 to 3945.
Vol. 18, Pages 3946 to 4222.
Vol. 19, Pages 4223 to 4626.

R. Vol 3, 4, 5, 6
J.B. 9-27

In addition to the typewritten matter in said volumes, there are a number of exhibits referred to but not copied therein, which are by agreement left in the custody of Mr. Johnson subject to inspection as part of the record.

Now embraced in R. Vol. 9, 21, 22, 26, 29 as original documents sent up

ADDITIONAL STIPULATIONS AFFECTING COURT MARTIAL RECORD.

Vol. 18 P. 8807

By formal stipulation of Dec. 20, 1902 (Wyman Vol. 9), pp. 4487-8, the following testimony and evidence taken before the General Court Martial convened under War Department orders Special No. 282, issued Dec. 2, 1897, for the trial of Oberlin M. Carter, were to be admitted as if taken on examination and cross-examination.

(1) Oral testimony of witnesses (on lists hereinafter referred to) served on opposite counsel.

(2) Exhibits hereinafter referred to by number and description on lists served on opposite counsel.

Vol. 18 P. 8809 and 8848

(Wyman Vol. 9) pp. 4490 and 4560. Copies of papers set out in the Court Martial Record or attached thereto may be used in lieu of originals, but original documents referred to to be held subject to inspection and considered part of record.

Vol 18 P. 8808

(3) (Wyman Vol. 9) p. 4488. Objections made by United States to admission of evidence to be preserved. Defendant's objections made in former proceedings withdrawn, and defendants to make objections *de novo*.

Vol. 18 P. 8810

(Wyman Vol. 9) p. 4493. All objections of defendants to any of the said evidence should be served upon complainant's counsel at time of serving list of said witnesses whose testimony was to be used.

Additional objections of complainant to defendant's evidence to be served on defendant's counsel.

Vol 29

(4) Complainant's Exhibit 643 (Wyman Vol. 12 of Exhibits) contains the list of witnesses from the Court Martial Record whose testimony therein the Government introduces, served on defendant's counsel per agreement of Dec. 20, 1902.

Vol 29

Complainant's Exhibit 641 (Wyman Vol. 11 of Exhibits)

contains the list and description of the exhibits from the Court Martial Record, which the Government introduces, served upon defendant's counsel per agreement of Dec. 20, 1902.

(5) Defendant's Exhibit 128 (Wyman Vol. 9), p. 4503, refers to the list of witnesses from the Court Martial Record whose testimony therein the defendants introduce served upon the Government's counsel per agreement of Dec. 20, 1902.

Defendant's Exhibit 130 (Wyman Vol. 12 of Exhibits) contains the list and description of the exhibits from the Court Martial Record, which the defendants introduce, served upon Government's counsel as per agreement of Dec. 20, 1902.

Deposition of R. W. Tailer not part of Record.

(6) The defendants offered in evidence (Wyman Vol. 2), p. 108 and Vol. 9, p. 4506, the oral testimony of R. W. Tailer, of New York City, taken April 6, 1898, by deposition before a deputy Judge Advocate General in New York, under an agreement between counsel in charge of the Court Martial trial, proceeding at Savannah.

This deposition is copied in Wyman Record Vol. 3, pp. 2024-2030. The deposition was rejected by the Court Martial and not received in evidence in that case, but for purposes of preserving the ruling of the court it was given the Exhibit number 438 (Court Martial Record Vol. 19), pp. 4524-5.

The admission of the deposition in the present cause, was objected to by the Government (Wyman Vol. 2), p. 108, and (Wyman Vol. 9), pp. 4506-7.

The grounds of objection is that the deposition was not taken in this cause or under the processes provided by law for taking evidence in this cause, and if it comes in at all

it must come in under the terms of the agreement of Dec. 20, 1902, as to the admission of oral evidence "taken before the General Court Martial," and as it does not fall within the terms of that agreement, therefore is inadmissible.

The formal agreement of Dec. 20, 1902, is specific as to the parts of the Court Martial Record which were to be admitted, and it divided the evidence to be admitted into two classes, oral testimony taken before the Court Martial, and documentary evidence, and provided separately as to what evidence as to each class from the Court Martial Record should be admitted.

> (Wyman Vol. 9) p. 4488, Clause (2). "The oral testimony of any witness or witnesses taken before the General Court Martial."

The rule *inclusio unius exclusio alterius,* would exclude testimony which was not *orally taken* before the Court Martial.

Mr. Stone, solicitor for defendants, seeks to avoid this by stating (Wyman Vol. 9), p. 4509:

> "Well, I offer it under the agreement and will let the court decide it. I call attention to the fact that the agreement provides that all original exhibits before the Court Martial shall be admissible, and this is an original exhibit before the Court Martial, although they found fault with it."

The reply is, there is no such agreement making "all original exhibits before the Court Martial admissible in this cause."

The clauses of the agreement bearing on the point are clauses "f" and "g" (Wyman Vol. 9) p. 4490. Clause (g) provided that counsel should serve on opposite counsel "a complete list of the exhibits or *other documentary* evidence in the Court Martial Record," intended *to be offered* by such party.

Here again the rule *inclusio unius, etc.,* and the rule

ejustem generis, would exclude any intent to embrace in the term "exhibits," anything which was not in the nature of documentary evidence such as maps, drawings, letters, reports, etc. Besides this clause merely provided for a definite statement of what documentary evidence was intended to be offered and not for its admission. It was expressly provided in clause (f) of the agreement that:

> "The admissibility in evidence of said exhibits or documentary evidence shall be subject to any and all objections which might ever have been made to the same."

It will therefore be seen that the mere fact that said deposition of Tailer was offered before the Court Martial, rejected, and marked with an exhibit number, does not make it admissible in evidencec in this cause under the agreement, and does not make it admissible under the terms of the agreement.

The point sought to be made by Tailer's deposition, is in relation to the purchase by Carter *in his own name* in October, 1895, through Reed & Flagg, brokers, of certain coal stocks, towit:

October 8, 9, 10, 1895—400 half shares of stock
Delaware, Lackawanna and Western Ry. Co. .. $33,856.25
October 8, 1895—200 shares stock,
Delaware & Hudson Canal Co. 26,425.00

At the time of the purchase, Mr. R. F. Westcott was in Europe, and it is otherwise in evidence that Carter had, during Westcott's absence, a power of attorney from Westcott, which the Government contends Carter used as well in transactions legitimately Westcott's, as in transactions of Carter's intended by him to be concealed in that way. The deposition of Tailer to which objection is made, states (Wyman Vol. 3), p. 2028:

That he was a retired merchant, and a neighbor of Mr.

Westcott's. That after Westcott's return from Europe in the spring of 1896, Westcott called upon him, and

> "He was speaking in general about investments, as he advised me previously to buy some Reading railroad bonds, which I bought some time before. He said that he had given in his absence Captain Carter a power of attorney, and he had bought for his account some coal stocks. That was all that was said about Captain Carter at that time.
>
> In the spring, about the same time in 1897, he called at my office again after his return from Europe, and speaking in general of investments, he mentioned that the coal stocks—Delaware & Hudson he mentioned and others, had declined and I told him all he had to do was to wait until they went up again, that Captain Carter had bought them.
>
> Mr. Westcott told me that the stocks were bought by Captain Carter under the power of attorney mentioned in the previous answer, and that he had given Captain Carter the order to buy them, and therefore it must have been with Mr. Westcott's money. Mr. Westcott did not express himself satisfied or dissatisfied but he did say that they had declined a little."

It is the contention of the Government that the Delaware & Hudson and Lackawanna stocks purchased by Carter in his own name in October, 1895, were purchased with a portion of Carter's share of the Greene and Gaynor contract funds:

That the Court Martial was legally correct in rejecting alleged statements made one and two years after the purchases, not part of the *res gestae* and made, if made at all, by a third person, Westcott, to a fourth person, Tailer, in casual conversation on another subject, under circumstances in which the language used might easily be misapplied or misunderstood, does not admit of a legal doubt.

The only way that such statement could possibly be admissible, would be as evidence tending to impeach R. F. Westcott for making contradictory statements, if R. F. Westcott's

testimony had been admitted in evidence in the Court Martial, and not then unless Westcott had denied the conversation after having his attention called specifically to the time, place, circumstance and language used.

Conrad v. *Griffey*, 16 How., 38.

1 Greenleaf Evidence, Sec. 462.

It is true that Westcott's subsequently taken deposition before Commissioner Shields, is now offered by the Government in this cause over the objections of the defense, but not for the purpose of proving the intrinsic facts to which he therein testified: because not having been taken in a proceeding to which Carter was a party, it was not admissible for that purpose, but for the purpose of showing that I. S. and L. D. Carter, had notice from that testimony in 1900, of the fact that Westcott had repudiated Carter's claim that these half million of assets had been gifts to him from Westcott, and admissible against Carter as co-conspirator with them, under his efforts to cover up, as we insist for Carter's ultimate benefit, at least $22,500 of these assets, in the names of L. D. and I. S. Carter as *bona fide* purchasers for value without notice under contracts with Carter, made subsequent to 1900. For the purpose for which it is offered, viz.: *notice*, the ultimate truth of Mr. Westcott's deposition is not in issue.

In his testimony before Commissioner Shields, Westcott was asked about this alleged conversation with Tailer, and testified (Shields Vol. 2), print pp. 1336-38. That he had called upon Tailer after his, Westcott's return from Europe. That the conversation was not about Westcott's investments made while he was in Europe. That the talk was about Reading railroad bonds which Westcott some time before had advised Tailer to purchase.

Vol. 24 P. 11739
Page 1337:

"Q. And didn't you tell him that you had given in your absence Captain Carter a power of attorney?

A. I might have done so.

Q. And didn't you tell him that he had bought for your account some coal stocks?

A. No, sir.

Q. Will you testify that you didn't?

A. Yes, sir, because he hadn't done it."

Vol 24 P. 11740
Page 1338:

"Q. Didn't you talk with him about the Delaware & Hudson?

A. I have no recollection.

Q. Will you testify you did not?

A. No.

Q. Didn't you tell him that those were the stocks that Carter had bought for you?

A. No, sir.

Q. Will you testify you did not?

A. Yes, sir."

We submit that if Tailer's deposition was admissible, which we deny, that the facts are shown by the other evidence to be as Westcott testified to them, and not as Tailer says Westcott spoke of them in this conversation.

Tailer's statement hereinbefore quoted, that Westcott told him that "he had given Capt. Carter *the order* to buy them (the coal stocks)" is contradicted in the substantive fact by Carter's own testimony. Carter testified as to these stocks (Court Martial Record Vol. 19), p. 4426:

Vol. 19 P. 4426

"It is the only stock purchase I ever made for him, because *I really did not have authority to buy that*, he was dissatisfied with it and I never bought any more."

Vol. 5 P. 2912

Complainant's Exhibit 339 (Shields Vol. 5), p. 2503, is Carter's order dated Oct. 4, 1895, to Reed & Flagg, for these stocks to be purchased in his own name. We therefore insist that if Tailer's deposition is admissible at all, which we deny, it shows on its face that he misunderstood or mis-

interpreted the purport of Westcott's remarks, and that in any event it amounts to nothing in view of Carter's own admission, which contradicts it. We insist, however, that the deposition as a whole is not admissible because not taken regularly in this cause, and is not within the terms of the agreement as to evidence taken before the Court Martial.

If the defendants would withdraw their objection to the admission of Westcott's testimony so as to allow it to be considered on the entire merits of the case, we would gladly withdraw objections to Tailer's deposition. As they decline this, we insist on our objections.

(G) THE BOARD OF OFFICERS RECORD.

The formal stipulation of counsel of Dec. 20, 1902, provides (Wyman Vol. 9), p. 4495:

> "The report which is verified by the initials of Colonel George L. Gillespie, made by the Board of Inquiry of which Colonel Geo. L. Gillespie was president, of the statements (not made under oath), and not hearsay, of witnesses before said board on the inquiry made in the fall of 1897 by said board into Captain Oberlin M. Carter's administration at Savannah, may be referred to by either party or by the court for what such statements not made under oath may be worth.
>
> It appearing from the report of the Board of Inquiry that there were certain affidavits tendered to the Board of Inquiry by Oberlin M. Carter, which are not copied into the stenographer's report of the testimony of witnesses (not under oath) before the board, and the present counsel of the parties not now knowing what those affidavits are or where they are, it is agreed that if they can be produced and identified that they shall be considered as part of the Board of Inquiry record on the same footing as the unsworn statements of witnesses before the board as provided in clause (1), with the further statement that the Board of Inquiry report states, that they were typewritten affidavits closely identical in phraseology and from persons who were accessible, and should have appeared before the board for cross-examination."

THE BOARD RECORD CONSISTS OF:

Original

Vol. 1, pages 1 to 455, typewritten.

Vol. 2, pages 458 to 685, typewritten.

Vol. 3, pages 686 to 892, typewritten.

In Envelope (F), written statement submitted by Captain Carter to the board dated Oct. 23, 1897.

In Envelope (I), written statement submitted by Captain Carter to the board, dated Oct. 29, 1897.

In Envelope (G), a bunch of typewritten affidavits rejected by the board as referred to in agreement above.

In envelopes held in custody of Mr. E. I. Johnson, subject to inspection, numerous exhibits to the board record.

It was further stipulated as follows (Wyman Vol. 9), p. 4560:

> "It is also agreed that copies of papers set out in the Court Martial proceedings, and the record thereof, or in the Board of Inquiry proceedings, and copies of exhibits attached to either of said proceedings, may be used in lieu of the original documents and papers, subject to the same provision that if question is made about accuracy, the originals shall be produced for inspection of the court in this cause."

(H) PARSONS RECORD.

Testimony taken before C. A. Parsons, Special Examiner, New York.

Original

Vol. 1, pages 1 to 52, typewritten. (Testimony taken June 5, 1902, relative to American Mortgage Company, investment and to notoriety given through publications of R. F. Westcott's testimony before Commissioner Shields in 1900.)

Pages 187 to 216, typewritten. (Testimony taken Oct. 7, 1904. Judge, Hamilton, Rose and Duval for defense, and Hartshorne for complainants.)

Original

Vol. 2, pages 53 to 186, typewritten with exhibits bound in. (Testimony taken Sept., 1903, proving accounts of banks, brokers, etc., New York. See stipulations of counsel therein relative proof of the accounts therein by affidavits thereto, waiving cross-examination and waiving production of original books of accounts, pages 54-55-60, etc.)

R. Vol 10-28

(I) **HEWLETT RECORD.**

Testimony taken before U. S. Commissioner Hewlett, Savannah, Ga., February and March, 1903, and October, 1904.

Original

Vol. 1, pages 1 to 142, typewritten. (Testimony on part of complainant.)

(a) Certain exhibits (maps and plats) referred to by numbers in the commissioner's certificate and filed with the clerk with report of testimony.

(b) Certain original documents referred to therein, held by Edward I. Johnson, by agreement of counsel subject to inspection.

R. Vol 9-27

Vol. 2, pages 1 to 19, typewritten. (Testimony on part of defense.) Affidavits of

(a) J. D. Clark and Patrick C. Roach, on part of defense.

(b) John J. McDonough, on part of complainant, admitted in evidence by agreement and attached as exhibits.

(J) **BOOTH RECORD.**

Testimony taken before Special Master W. M. Booth, on reference for accounting from L. D. and I. S. Carter, and O. M. Carter.

Original

Vol. 1, pages 1 to 275, typewritten. (Oral testimony.)

R. Vol 10

Vol. 2, complainant's exhibits.

Vol. 3, defendant's exhibits.

Vol. 4, special master's report with exceptions and objections filed by respective counsel.

REPORTS OF RECEIVER, ETC.

By agreement of parties the reports of Max H. Whitney, Receiver, filed in this cause, should be considered in evidence.

Also the pleadings in the suits auxiliary to this suit filed in other district.

Box B 31.

HISTORY OF THE FILE CASE CONTAINING THE FIRST DISCOVERED INCRIMINATING PAPERS, DOCUMENTS AND LETTER-PRESS BOOKS, AFTERWARDS TRANSFERRED TO BOX "B. 31." THE PANDORA'S BOX IN THE CARTER CASE.

Captain Oberlin M. Carter, who had been in charge since 1888 of what had been denominated the Savannah Engineering District for the improvement of rivers and harbors, embracing the Georgia coast and interior waters tributary thereto, from South Carolina on one side to Florida on the other, having been appointed military attaché to the Court of St. James, Captain C. E. Gillette was assigned to take charge of the Savannah District.

Captain Carter left Savannah on July 17, 1897. He was officially relieved from duty at Savannah on July 20, 1897. Captain Gillette arrived in Savannah and took charge of the office on July 20, 1897. Testimony of J. W. O. Sterly (Shields Vol. 1), pp. 302-303. Carter's cross-examination (Wyman Vol. 3), type. p. 908. Carter was appointed a member of the Nicaragua Canal Commission July 24, 1897. Carter sailed from New York for Europe Aug. 7, 1897, and landed in New York on his return Sept. 10, 1897. Carter's cross-examination (Wyman Vol. 3), type. pp. 909-910.

Before Carter left Savannah (July 17, 1897), he got together a considerable number of his papers, books, correspondence, etc., and had them packed in a file case by one of his assistants, Mr. G. W. Brown, and had the file case boxed and put in one of the storage rooms connected with the engineer's office at Savannah. Carter's cross examination (Wyman Vol. 3), type. p. 912.

The file case was the property of the Government. (*Idem*, p. 913.) The file case was a kind of wardrobe affair with a

cupboard arrangement for books below, and pigeon holes from which small box arrangements were pulled out to receive papers and files. (*Idem*, p. 913.) This file case Captain Carter caused to be packed in a large wooden box and nailed up and placed it in a small room of the engineers' offices, and instructed Mr. J. W. O. Sterly, the chief clerk, to keep it there until he (Carter) would know where he would put them, and he would let Sterly know where to ship them. Carter gave Sterly the key to the small room but kept the key to the file case. Testimony of Sterly (Shields Vol. 1), pp. 307, 308, 303.

On June 1, 1897, Captain Carter had written the Quartermaster General for vouchers and information relative to shipping from Savannah at Government expense, his personal effects. Cross-examination Carter (Wyman Vol. 3), type., p. 912. The file case, locked and boxed, remained in that small room of the engineers' offices, until the Board of Officers, under General Gillespie as chairman, convened in Savannah about Sept. 22, 1897. Testimony of J. W. O. Sterly (Shields Vol. 1, p. 303.)

Carter's Efforts to Get the File Case.

Michael A. Connolly, who had been Carter's confidential stenographer and clerk, and who he had on leaving Savannah caused to be appointed to a clerkship on the Nicaragua Canal Commission, with office in New York City, met Carter at Quarantine Station on Sept. 10, 1897, as his ship arrived in the harbor of New York and Connolly told Carter that Gillette had "raised trouble." Carter's cross-examination (Wyman Vol. 3), type. 911. The fact of Carter's hurried return from England, and that Connolly met him at Quarantine, raises the strong presumption that Connolly had cabled him

the fact that "trouble" had arisen, and had been advised by Carter of his return.

Carter made a hurried trip to Washington, and on Sept. 11, 1897, while at Washington, he heard that Captain Gillette had raised questions in regard to irregularities or frauds in Carter's work in the Savannah District. Carter's cross-examination (Wyman Vol. 3), type. p. 910.

Carter saw the Chief of Engineers in Washington, Sept. 11, 1897. Carter's cross-examination (Wyman Vol. 3), type. p. 921.

Carter was back in New York on Sept. 13, 1897, and he admits he stated to the Board of Officers that on Sept. 13, 1897, he sent to Savannah by M. A. Connolly, a written order instructing Mr. J. W. O. Sterly, the Chief Clerk in the engineers' office at Savannah, to deliver to Connolly his papers and personal effects, and that Connolly informed Carter by wire that Sterly had declined to honor Carter's order. And on September 16, 1897, Carter left New York for Savannah himself, arriving there on the 17th. Carter's cross-examination (Wyman Vol. 3), type. pp. 922 and 914.

On Sept. 16, 1897, Captain C. E. Gillette sent the following telegram to the chief of engineers (Wyman Vol. 9) type. p. 4542:

DEFENDANT'S EXHIBIT 146. 12/9/05. R. H. W.

" September 16th, 1897.

Chief of Engineers, U. S. Army,
Washington, D. C.

I have reason to believe that important official records are contained in government file case packed with my predecessor's professional books in room rented by this office. Authority is requested to refuse access to that room to all persons except board appointed to investigate and to permit board to examine contents of all boxes supposed to contain professional books.

GILLETTE,
Engineers."

On Sept. 17, 1897, Captain C. E. Gillette sent the following telegram to the Chief of Engineers (Wyman Vol. 9), type. p. 4543:

DEFENDANT'S EXHIBIT 147. 12/9/05. R. H. W.

"September 17th, 1897.

Chief of Engineers, U. S. A.,
Washington, D. C.

Between three and four o'clock this morning unknown man came to room mentioned in my last telegram. Ran from my watchman who was unable to catch or identify him. Believe it vitally important to keep those documents in possession of government, and to have board given authority to examine them. Instructions requested as to procedure to sieze and hold papers and property of persons suspected of crime.

GILLETTE,
Engineer."

See the statement of Mr. G. W. Austin, night watchman, as to mysterious visit of some one to engineers' offices at 3 o'clock on that night. Board of Officers Record, 446-447.

Carter testified he "thinks" he asked the Secretary of War to allow him to have "access" to the papers. Carter's cross-examination (Wyman Vol. 3), type. p. 915.

On Sept. 17, 1897, the Chief of Engineers wired Captain Carter as follows (Wyman Vol. 9), p. 4470:

DEFENDANT'S EXHIBIT 124. R. H. W.

" WASHINGTON, D. C., (Sept.) 17, (1897).

To Captain Carter.
Care Captain Gillette, Engrs.,
Southern Bank Building, Savannah, Ga.

Secretary of War directs Captain Gillette to hold in his possession all books and papers of every kind in the rooms of Savannah office and to turn them over to Board of Engineers.

WILSON,
Chief of Engrs.

About Sept. 17th, the key to the room was turned over by Sterly to Captain Gillette. Testimony of Sterly (Shields Vol. 1), p. 310. Testimony of Gillette. (Shields Vol. 1), p. 328. Sterly kept the key to the room in the safe up to the delivery to Gillette. Testimony of Sterly (Shields Vol. 1), p. 312. Captain Gillette kept the ~~kept~~ key of the room from the time Sterly turned it over to him September 16 or 17, 1897, to September 22 or 23, 1897, when he turned it over to General Gillespie, president of the Board of Inquiry Officers, and during that time the file case remained in the room unmolested. Testimony of Gillette (Shields Vol. 1), p. 321. The Board of Officers consisted of Major Charles W. Raymond, Major Henry M. Adams, and Colonel (now General) George L. Gillespie, and convened in Savannah Sept. 21, 1897. Testimony of Gillespie (Shields Vol. 1), p. 329. About the 23rd of September, 1897, General Gillespie and Colonel Raymond and Carter went over to the room in which the file case had been stored as aforesaid and the file case was pointed out in the room by Captain Carter to General Gillespie. Testimony of Gillespie (Shields Vol. 1), p. 330. The file case was then carried over from the old office over Southern Bank of State of Georgia, to the new offices over the Citizens' Bank, and put in Captain Gillette's room at the new offices occupied by him in the Citizens' Bank Building. Testimony of Gillespie (Shields Vol. 1), p. 331, and testimony of Gillette (Shields Vol. 1), p. 321. On the way over, from the room where Carter pointed out the box, to the new office, Captain Carter gave General Gillespie the key to the file case. Testimony of Gillespie (Shields Vol. 1), pp. 331, 342. And at the new office the box was opened by General Gillespie in the presence of Captain Carter. Testimony of Gillespie (Shields Vol. 1), p. 331.

Permission to open and inspect these papers was given to the Board of Officers by Captain Carter on Sept. 21, 1897,

by letter. Government Exhibit 67½, marked Defendant's Exhibit 99 (Wyman Vol. 3), type. p. 2036.

DEFENDANT'S EXHIBIT 99. 1/30/05. R. H. W.

"SAVANNAH, GA., September 21, 1897.

Col. G. L. Gillespie, Major C. W. Raymond, Major H. M. Adams, Corps of Engineers.

SIRS:

As soon as possible after being advised of the charges against me upon which the present examination is based, I obtained permission from the Chief of Engineers to return to Savannah for the purpose of preparing for my defense. Prior to my departure I had sent to Savannah by Mr. Connolly a letter addressed to Mr. Sterly,—my former chief clerk, and a man in whom I had unbounded confidence, and who was entrusted with many of my personal matters,—requesting him to deliver to Mr. Connolly for me the key to my residence and also the key to a certain room in the Southern Bank Building in which I had left wine cases, books, private and personal notes, letters and papers, and also private papers belonging to my father-in-law, Mr. Westcott, whose business I have been transacting.

It was reported to me that Mr. Sterly delivered to Mr. Connolly the key to my residence but declined to deliver to him the key to the room or to deliver the cases or their contents.

I left New York on the 16th and on the 17th en route I wired the Chief of Engineers requesting permission to have access to the public records and to my private and professional notes and papers in the presence of Capt. Gillette. On my arrival at Savannah on the evening of the 17th, I found two telegrams awaiting me, both from the Chief of Engineers, the one granting my request, the second revoking this permission, the revocation being based, as I believe, upon representations made from Savannah. I have thus been deprived of the right to see my private papers or to take possession of my property. Outside the promptings which are common to every freeborn gentleman to defend his private papers and effects at all hazards, I have but one controlling reason why I am insistent in my desire to obtain possession of

my private property, and this reason is that among my papers there are, as I remember, some memoranda tending to involve the names of two ladies. I do not hesitate to say that I am prepared to suffer any consequences personal to myself rather than to give publicity to their names. On the other hand, I have such confidence in the members of the examining board that I unreservedly place myself in your hands and shall be glad to deliver to you the keys to the only case which I believe is locked, and I give you full authority privately to open it and examine all of its contents. If there be things therein which, in your judgment, need explanation, please request such, but as to those things of a private character referred to herein, and which have no relation to my official duties, I respectfully request that they be turned over to me and that their contents be treated by you as confidential.

Very respectfully,

O. M. CARTER,
Capt. Corps of Engineers."

See testimony of General Gillespie (Shields Vol. 1), p. 339, and Carter's cross-examination (Wyman Vol. 3), type. p. 917.

The file case remained in Gillette's office during the hearing of the Board of Inquiry until its conclusion. Gillespie kept the key of the file case during the hearing of the Board of Inquiry. Testimony of Gillespie (Shields Vol. 1), p. 342. At the conclusion of the hearing, all the contents of the box were packed in two boxes by Captain Gillette assisted by his messenger and in the presence of General Gillespie, and the box lids were screwed down and sealed up and the boxes shipped by express to General Gillespie at Army Building, New York City. Testimony of Gillette (Shields Vol. 1), pp. 322-323. Testimony of Gillespie (Shields Vol. 1), pp. 332, 346. General Gillespie received the box in New York from the express company. Testimony of Gillespie (Shields Vol. 1), p. 332.

While in New York General Gillespie and Major Adams kept custody of the boxes and the papers were only examined in the presence of the members of the board. Gillespie (Shields Vol. 1), p. 347. The boxes were opened in New York by the Board of Officers, certain copies of papers made, then the papers were returned to the boxes and sealed up, and under the direction of Colonel Gillespie, Major Adams delivered them to Col. Clous, at Governor's Island, Colonel Clous being the Judge Advocate of the Court Martial appointed to try Carter. Testimony of Gillespie (Shields Vol. 1), 332. The two boxes were turned over sealed by Major Adams to Colonel Clous, the then Deputy Judge Advocate General of the Army, Dec. 6, 1897. Testimony of Clous (Shields Vol. 1), pp. 533-4-5. On Dec. 8, 1897, Colonel Clous turned them over to the Quartermaster's Department for shipment to the Judge Advocate General, Washington, through the Quartermaster's Department. Testimony of Clous (Shields Vol. 1), p. 533. General Clous, who went to Savannah to prosecute in the Court Martial proceedings, then made requisition for the boxes and they were shipped to him at Savannah the latter part of December, 1897. He kept the boxes unopened in his office in Savannah until he became ill, when he turned the boxes over to his assistant, Colonel McClure and Colonel Barr, who succeeded Colonel Clous as prosecutor. Barr took charge January 8, 1898. Testimony of Clous (Shields Vol. 1), pp. 535-6. Testimony of McClure (Shields Vol. 1), p. 538. Testimony of Barr (Shields Vol. 1), p. 544. The boxes were opened by Colonel Barr in Savannah on Jan. 17, 1898, in the presence of Mr. Rose and other of Captain Carter's lawyers. Testimony of McClure (Shields Vol. 1), pp. 538-9. Testimony of Barr (Shields Vol. 1), p. 544. McClure and Barr had continuous custody of the record during the Court Martial trial. Testimony of Barr (Shields Vol. 1), p. 545. After the two boxes which McClure designated as the

two old boxes were opened, McClure and Barr procured two new boxes with locks and keys in which all the papers wanted by Colonel Barr from the old boxes were put in the new boxes, and the papers which he did not want were put into one of the old boxes and delivered to Captain Carter. McClure (Shields Vol. 1), p. 540. Letters appearing from the envelopes to be simply personal correspondence in small envelopes, were not examined closely but delivered to Carter on the opening of the box. Testimony of Barr (Shields Vol. 1), pp. 549, 545. But he did not deliver any papers which appeared to relate to financial matters. Testimony of General Barr (Wyman Vol. 9), type. p. 4578. All the other papers not delivered to Carter which came in the two old boxes were after the Court Martial put by McClure in the other of the old boxes, which box had a mark on it "B. 31," and was sealed up and shipped by McClure to the Judge Advocate General, Washington, April 30, 1898. Testimony of McClure (Shields Vol. 1), pp. 540-1. Testimony of Barr (Shields Vol. 1), pp. 546-7.

At the time box "B 31" was shipped by McClure to the Judge *Advocate* General, he also shipped another box containing the stenographic report of the evidence and official proceedings of the court martial to the *Adjutant* General, Washington. Testimony of McClure (Shields Vol. 1), p. 552. A box from Savannah was received in Room 249, office of the chief clerk of the Judge *Advocate* General, Washington, May 2, 1898. The box was opened, and F. M. Smith, the property and library clerk of the Judge Advocate General's office, was called in by the chief clerk to assist him in examining the contents for the official record of the Carter Court Martial. The examination developed that it contained letter file boxes, letter press copy books and papers but not the official proceedings of the Court Martial. Testimony of Smith (Shields Vol. 2), pp. 935-6. The other box containing the official proceedings was brought in from the *Adjutant* General's office

about two hours later. Testimony of Smith (Shields Vol. 2), p. 935. The first box which had been examined by Smith as aforesaid, was then screwed down as it was found and sealed up and remained in the chief clerk's office in charge of Smith as property clerk until July, 1898, when he carried it down to the general store room of the War Department. Testimony of Smith (Shields Vol. 2), pp. 936-7.

In June, 1899, Smith took the box over and delivered it to the Department of Justice in the chief clerk's room. Testimony of Smith (Shields Vol. 2), pp. 937-8. This box "B 31" had been sent over from the War Department by request of the Attorney General made through Mr. Edward I. Johnson, who went over to the War Department and he took charge of the boxes when they were carried over to the Department of Justice and the box was opened by him in the presence of Mr. McKenney, attorney for Carter. Testimony of Johnson (Shields Vol. 1), pp. 9[illegible]. The papers remained in Johnson's custody thereafter until up to the Commissioner's hearing. Testimony of Johnson (Shields Vol. 1), p. 20. General Gillespie, Colonel Barr and Major McClure and Sterly all identified the box B 31, and the principal papers, documents and letter press books contained therein at the time of the Commissioner's hearing. In fact all of the documents from the box of which any use was made as evidence in the case, were identified in the testimony before Commissioner Shields, as being in the box at the time it was first opened in Captain Carter's presence and by Captain Carter's handwriting, except a great mass of receipted bills for personal purchases made by Captain Carter at various times. As to these the testimony is that a mass of bills were in the boxes at the time they were opened and their identity is proven by the tracing of the continuous custody of the box in the hands of official custodians from the opening, up to the Commissioner's hearing, and also by the fact that the receipted bills correspond to the original check-stub books and checks

of Carter also found in the box. The custody of the contents of the box is traced by the testimony of Mr. E. I. Johnson, in whose possession they have been, from the Commissioner's hearing before Shields up to the time the various papers therefrom were offered in the present civil proceedings. Testimony of E. I. Johnson (Wyman Vol. 1), type. pp. 18 to 21.

Character of Papers Found in the File Case.

The documents found in the file case are described in a general way in the list, Complainant's Exhibit 654 (Wyman Vol. 9), type. 4623, made by Colonel Charles F. McClure, when the box was opened at the Court Martial trial in the presence of Captain Carter's counsel. They will be referred to specifically later on in this brief under the appropriate head. At present it will be sufficient to state in a general way, that they consisted of letter press copy books, in which were copied letters written by Captain Carter from 1884 to 1897, some of which were official correspondence of his office, but most of which related to his private business transactions, such as letters to Greene and Gaynor, R. F. Westcott, to bankers and brokers and others; also letters to him of similar character. Bank statements, and letters and statements from brokers showing the purchase of large quantities of bonds and other securities, and transactions running into hundreds of thousands of dollars: also personal check stub-books of Captain Carter, and check stub-book kept by Captain Carter in the name of "R. F. Westcott, O. M. Carter, attorney"; also bundles of cancelled checks, and a large mass of receipted and other bills, indicating yearly expenditures of Captain Carter running into thousands of dollars beyond his salary and commutation as an officer; also a stock certificate book of the Empire Construction Company; also numerous

other papers and documents which are in evidence, and which will be more specifically referred to in this brief under the appropriate head.

It was the contents of this original file case which when disclosed to the Board of Officers brought on the Court Martial of Captain Carter. The intimate relationship between Carter, Greene and the Gaynors and the manner in which Carter's disbursements for personal expenditures had run up from 1890 to 1897 was therein disclosed, although at that time the details of the division of money between the contractors and Carter was not susceptible of proof, as they became later, through the bankers and brokers accounts brought into evidence at the time of the Greene and Gaynor hearing in New York in 1900.

Admissibility in Evidence of Papers from Box B. 31.

When the incriminating private papers from the file case were offered in evidence by the Government in the Court Martial trial, strenuous objection was made by Carter's counsel to their admission in evidence on the ground that they had been illegally "seized" by the Government and to admit them would be an invasion of his constitutional rights. ~~The argument of Carter's counsel on this point will be found in Court Martial Record Vol. VII, pp. 1557 to 1580. The reply of the Judge Advocate, pp. 1580 to 1593; and~~ the ruling of the Court Martial overruling the objection, p. 1593.

After Carter's conviction by the Court Martial, the record was sent up to the Secretary of War for the President's review, the Court Martial having been ordered by the President himself. The Spanish War being on, there was a delay

in the proceedings for some time. President McKinley referred the case to his Attorney General, Mr. John W. Griggs, for his opinion. The opinion of the Attorney General rendered Sept. 29, 1899, is found in Opinions of Attorneys General, Vol. 22, page 589. In it the Attorney General says:

> "Another objection urged on behalf of the accused is that certain private papers belonging to him were illegally seized by the authorities and illegally retained against his protest, and illegally used as evidence on the trial. It is contended that the facts show that the alleged seizure of these papers constituted an unreasonable seizure of private papers, contrary to the provisions of the Federal Constitution in that respect. I am of the opinion, in the first place, that the facts do not show such an unreasonable seizure as is forbidden by the Constitutional prohibition. In the second place, if the seizure was unlawful, I think the accused practically consented to the use subsequently made of the papers, although it is true that he tried to withdraw that consent prior to the use of the papers as evidence.
>
> In the third place, conceding that the seizure was unlawful and was not acquiesced in by the defendant, yet that did not render the papers incompetent to be offered and used as evidence in the case. (Citing *Leggett* v. *Tollervey*, 14 East, 3002. *Commonwealth* v. *Dana*, 2 Metcalf, *Mass.*, 329). * * *
>
> I do not think the decision of the United States Supreme Court in the case of Boyd, 116 U. S. 616, is in conflict with this rule."
>
> 22 Opinions, pp. 597-8.

However important this question may have been in the criminal case, it is not a question in the present case. In the first place, no objection was made on that ground when the documents from Box B. 31 were offered. In the second place, the right to make it was expressly waived by defendant's counsel. In the record (Wyman Vol. 2) printed p. 427, Mr. Stone stated:

> "I make no point in this case that the seizure of those papers by the Government, was unlawful or unjustified, or contrary to the Constitution, because we are more

than willing that every paper in Carter's possession or in his handwriting, or that was ever in his possession, should be introduced in evidence in this case, because we are endeavoring to produce everything here regardless of whether we are bound to produce it or not; and I make this statement to eliminate any question as to that point."

The Case on the Evidence.

CONSPIRACY—HOW PROVED.

The charge against the defendants being a conspiracy to defraud the United States, it is well to consider in the outset, the rules of evidence by which such conspiracies are ordinarily proved.

"A conspiracy is proved either expressly or by proof of facts from which the jury may infer it. It is seldom proved expressly. Nor can a case easily be imagined in which that is likely to occur, unless where one of the persons implicated in the conspiracy consents to be examined as a witness for the prosecution. In nearly all cases, therefore, the conspiracy is proved by circumstantial evidence, namely, by proof of facts from which the jury may fairly imply it.

It is usual to begin by showing that the defendants all knew each other, and that a certain degree of intimacy existed between them so as to show that their conspiracy together is not improbable. If to this can be added evidence of any consultations or private meetings between them, there is then a strong foundation for the evidence to be subsequently given, namely, of the overt acts of each of the defendants in furtherance of the common design."

Archbold's Criminal Practice and Pleading, (Edition with J. M. Pomeroy's Notes), page 1841.

Waterman's Edition, page 1054.

"To establish fraud, it is not necessary to prove it by direct and positive evidence. Circumstantial evidence is not only sufficient, but in most cases it is the only proof that can be adduced."

Rea v. *Missouri*, 17 Wall., 543.

"Circumstances altogether inconclusive, if separately considered, may, by their number and joint operation, especially when corroborated by moral coincidences, be sufficient to constitute conclusive proof."

The Slavers, 2 Wall., 401.

Castle v. *Bullard*, 23 How., 187.

The Government produces both circumstantial and positive evidence in the case at bar.

FORMER ASSOCIATION.

Let us begin then, with the evidence when the defendants first were brought together, and the degree and character of the intimacy which sprang up between them, leading up to the specific charges of conspiracy and fraud.

CARTER'S SERVICE HISTORY.

Carter's early history may be obtained by reference to Complainant's Exhibit 13, being from Carter's letterpress book No. 3, page 431, from Box B. 31. (Shields Vol. 1) pp. 261-2. It will be sufficient, however, to refer to Carter's cross-examination on this point. (Wyman Vol. 3) type. p. 901.

Oberlin M. Carter graduated at West Point, New York, in 1880, appointed to the army as lieutenant. First assigned to duty at West Point during summer of 1880.

In the fall of 1880, was assigned to duty at Willet's Point in New York harbor, and was there about two years. He was then assigned as engineer officer on the staff of General Pope, at Leavenworth, Kansas, and remained there under him and under General Augur, who succeeded him until August, 1884.

He reported to General Gillmore, in New York, in August, 1884. General Gillmore was the engineer officer at that time in charge of river and harbor improvements over a portion of the Atlantic seaboard from South Carolina to Florida. Carter was then sent to Fort Monroe, Va., then to Charleston, S. C., thence to Savannah, Ga., arriving in Savannah Oct. 14, 1884.

It was either when he was at Charleston or after he reached

Savannah, that Carter first met Benjamin D. Greene. (Wyman Vol. 3) type. p. 901-3.

Captain Bailey was the local officer in charge at Charleston and Savannah, as assistant to General Gillmore, who had his office in New York. Carter was at first assistant to Captain Bailey.

In 1885, Bailey was relieved from that duty, and General Gillmore's district was divided into two parts, and the Charleston part given to Lieutenant Abbott, and the Savannah part given to Lieutenant Carter.

Lieutenant O. M. Carter continued from then up to the time of the death of General Gillmore, as the assistant to General Gillmore in local charge in Savannah, of the territory which was later called the Savannah district. (Wyman Vol. 3) p. 904.

General Gillmore died about April 6, 1888, and Carter continued at Savannah under the direction of General Abbott, who was stationed in New York until about April 24, 1888. (Wyman Vol. 3) p. 905.

Savannah District Created.

About April 24, 1888, a new division of the engineering districts took place, the Savannah Engineering District, for improvement of rivers and harbors, was created, and Lieutenant O. M. Carter was placed in charge of it.

The Savannah District embraced the coast between the South Carolina side of the Savannah river and Fernandina, Fla., and the rivers flowing into that coast line. It embraced Cumberland Sound, Georgia, which forms the entrance to Fernandina harbor. It embraced the important harbors of Savannah, Darien, Brunswick, St. Marys and Fernandina. It embraced the improvements on the tidal rivers forming the "Inside Route" between Savannah and Fernandina, known

as Romley Marsh and Jekyl Creek. It embraced the improvements on the interior navigable waters of the Savannah, Altamaha, Oconee and Ocmulgee rivers. (Wyman Vol. 3) pp. 905-6-7.

Oberlin M. Carter was promoted to a Captaincy in March, 1891. He acknowledged the receipt of his commission March 12, 1891. (Wyman Vol. 3) p. 908.

Carter continued in charge of the Savannah District until he was relieved by (then) Captain Cassius E. Gillette, on July 20, 1897. (Wyman Vol. 3), type. p. 908.

PRIOR TO 1891 CARTER WANTED TO LEAVE THE SERVICE.

Contemplated Partnership with Greene in Contract Work.

Major Frederick V. Abbott, who was the same Lieutenant Abbott who was in charge of Charleston harbor while Carter was in charge of Savannah, under Gillmore, and who after the death of General Gillmore was put in charge of Savannah District in April, 1888. (Wyman Vol. 9), type. 4638, 4640, testified:

That in 1888, there had been a considerable period in which there had been a failure of Congress to appropriate for river and harbor bills; that about May, June or July, 1888, he had a conversation with Lieutenant O. M. Carter in which Carter stated to him:

> "That there was a possibility of a discontinuance of river and harbor work, and that by going into professional contracting, a man would stand a chance of having a higher position in the world, than if he remained in the engineer service, where our actual construction and large works depended upon the continuation of appropriations sufficient for the civil works on the part of the United States Government. * * *" (Wyman Vol. 9) type. p. 4640.
>
> "I remember his specifying that he expected to go in

with Captain Greene in a contract, I think in Chili, probably this same contract that this letter was written about, but I think the conversation must have been some time in May or June (1888), and most probably not later than that. My impression is that I endeavored at that time to persuade him not to leave the service, as I considered him a valuable officer at that time."

That Carter had such a contemplated arrangement with Greene and Gaynor is conlusively shown by an original letter in Box B 31, from B. D. Greene to Carter dated Oct. 25, 1888, Exhibit 8 (Shields Vol. 1), p. identified 250, copied 25[illegible] See Post p. 65.

Carter testified on cross-examination, that in the spring of 1890, he contemplated resigning from the army. (Wyman Vol. 3) type. p. 923.

Carter was married Oct. 29, 1890, to Margaret N. Westcott, daughter of Robert F. Westcott of New York, who after her marriage signed herself usually Margaret W. Carter. She died December 7, 1892. Carter's Cross-Examination (Wyman Vol. 3). type. p. 923.

IN 1896-1897 CARTER WAS ENDEAVORING TO HOLD ON TO THE SAVANNAH ASSIGNMENT.

In December, 1895, it appears that Carter was tendered an appointment on General Miles' staff. On Dec. 28, 1895, Carter writes to Chief of Engineers relative thereto. Comp'lt Exhibit 476 from Box B 31. (Wyman Vol. 1) type., offered in evidence pp. 21 & 22, copied p. 216, in which he says:

> "If you desire me to accept General Miles' offer, I believe I can be of service to the Corps, but I can be of *greater* service to my District and would under no circumstances accept any position that would now or within the next two years cause me to be relieved of any of my present duties or change my station. Furthermore I do not want any assistant, but will *personally* disburse and conduct my work."

The Defendants offered in evidence from Box B 31, as Defendant's Exhibit 140, copied (Wyman Vol. 9), type. 4531, a personal letter to Carter, dated Dec. 28, 1905, from Captain Geo. W. Goethals, who was Carter's friend connected with the Chief of Engineers' Office at Washington, and who it appears kept him advised confidentially with what was going on in the department, in which Goethals says:

> * * * "I was told to tell you that on Monday A. M., General Miles came in bringing an application to the Secretary of War in which the latter, is requested, with consent of Chief to detail you *in addition to your present duties,* to special service at Headquarters of the Army, and that the application went forward. This is all that I could get to tell you. By inference it follows that assent of Chief must have been given. I tried to explain just what information you particularly desired, viz.: that if such a detail was made that you would not be disturbed in the charge of both Savannah and Fernandina work, but an opinion on this point was not forthcoming."

In another letter to Carter dated Jan. 27, 1896, Compl's Exhibit 497 (Wyman Vol. 1), pp. 246-7, Goethals says:

> "If MacKenzie echoes Wilson, as at times I feel inclined to think he does, you had better join me and seek some hole to hide in when change in the administration of Engineers Department takes place, for M— remarked if anyone but General C. were Chief, you wouldn't remain long in Savannah after the issuance of this last order."

It appears that by Special Order No. 19 of the War Department, Carter was actually appointed on General Miles' staff, but obtained a revocation of it on the ground of alleged ill health.

Complainant's Exhibit 650, from Box B 31 (Wyman Vol. 9), type. identified p. 4651, copied p. 4652, is a letter from General Miles to Carter dated Jan. 25, 1896, which is as follows:

"WASHINGTON, D. C., January 25, 1896.

My Dear Captain:

I have received your two letters, and considering the condition of your health and your desire, as expressed in your letter, I have requested that the order be rescinded, putting it on the ground of professional work, as you will notice in Special Order No. 19, Headquarters of the Army. This leaves the matter as it was before, for future consideration.

I hope this will find you improving in health, and that the present treatment may fully restore you to strength again.

Very sincerely yours,

NELSON A. MILES,
Major General, U. S. A.

Captain Oberlin M. Carter,
Corps of Engineers,
Savannah, Ga."

General John M. Wilson succeeded General Craighill as Chief of Engineers, in February, 1897, and in accordance with what seems to be a general custom of the Department, had determined to make general changes in the assignment of officers of the Corps of Engineers.

Defendant's Exhibit 119 from Box B 31, is a letter from Goethals to Carter, dated April 27, 1897. (Wyman Vol. 6) Vol 6 p 4416 Print. p. 428, in which Goethals says:

"There is to be no change in the South until October at the earliest, and word has gone forth to that effect, and what is in the air I don't know."

It appears that Captain Carter had contemplated a trip to Europe in the summer of 1897, and that invitations in blank to attend a convention of Engineers at Stockholm had been furnished him. Carter filled out one of these blanks and forwarded it to General Wilson, which brought forth a severe criticism from the latter. See letter Wilson to Carter July 31, 1897. Defendant's Exhibit 127, (Wyman Vol. 9) Vol 9 p 4805 Print. p. 4485.

Carter had made a European trip in the summer of 1895,

and Capt. Goethals had been allowed to make disbursements from Washington for the Savannah District during Carter's absence. (Wyman Vol. 3) p. 1337. That Carter intended to make another summer trip to Europe in 1897 under color of attending that Congress of Engineers, even prior to his knowledge that he would have his assignment changed from Savannah, is shown by the following from the letter of Goethals to Carter of April 27, 1897, Defendant's Exhibit 119, from Box B 31 (Wyman Vol. 6), print. p. 428:

> "I am not in it here at all, and the first intimation of your application for Stockholm, was your note. I called for the records and saw the letter that had been sent in reply. I sounded around and have gathered that if an invitation is given. to have a representative attend the Congress and you should decide to go at your own expense, you will probably be allowed to go, but a three weeks trip will be considered ample, assuming that the Congress will be in session a week. Kuhn's idea seems to be against representation because of the very important contracts in Fortification branch, and the Colonel rather seems to have a similar impression.
>
> From the latter, I also learn that the present head (evidently meaning Gen. Wilson) thought Gen. Craighill did wrong in letting anybody disburse for you in 1895, and seems to have an idea that should you go abroad to the Congress, some officer should be on the ground all the time."

On April 29, 1897, Carter wrote a confidential letter to Capt. Fred V. Abbott (in charge of Charleston, S. C. District), Complainant's Exhibit 651 from Box B 31 (Wyman Vol. 9), type. 4653, in which Carter says:

> "I have made arrangements to go abroad about July 5th, and return November 1st, being absent thus about three and a half months. I want to do as I did in 1895, viz: Retain charge of my works and turn over simply the *money* to some officer, but General Wilson may not agree to this. If not, I want to have an assistant to whom I can turn over my works temporarily as I presume Lieut. Stuart will be relieved from duty under General Orders to go to Willetts Point about October or No-

vember. Would you be willing to let him come to me on July 1st so that he might take my works until my return? He then going to Willetts Point?"

On May 6, 1897, Carter wrote a letter to Cunard S. S. Co., ew York, Complainant's Exhibit 652 from Box B 31 (Wyan Vol. 9), type. 4654, in which he says:

"I have reserved rooms #72 and #107 on the Compania, sailing July 17, but find I cannot get off then. Please change reservation to rooms of same number on Lucania, sailing Aug. 7, 1897."

It appears, however, that Carter's effort to be retained at avannah failed, and he was forced to look out for some other ssignment.

On cross-examination, he testified that he was detailed as ilitary Attaché to the Court of St. James on May 25, 1897. Wyman Vol. 3) Type. p. 908.

On June 1, 1897, Carter writes from Savannah to Honorle John Hay, United States Ambassador, London, England, at he had not yet been relieved from his duties at Savannah, nd would not be until after July 1, 1897. Complainant's xhibit 16 (Shields), print. 269.

That Carter made strenuous efforts to be retained in Sannah up to the last, is apparent from the following:

Duval Letter of June 2, 1897.

Complainant's Exhibit 522, is a letter from H. R. Duval, resident of Florida Central & Peninsular R. R. Co., to Car-r, dated New York, June 2, 1897, from Box B 31, offered nd copied in record (Wyman Vol. 1), type. p. 274, in which uval says:

"I have not heard anything from Washington. The fact is that all the trouble I took in the endeavor to have you retained—*according to your own wishes*—at Savannah, was so barren of results, that I have concluded that I shall not, hereafter, attempt to exercise any influence in Army Affairs."

The defense has offered in evidence an affidavit from Mr. Duval, Defendant's Exhibit 126 (Wyman Vol. 9), type. 4474 to 4480, which is by agreement admitted as if taken under examination and cross-examination. In this affidavit, Mr. Duval says:

> "Shortly afterwards, whilst in the War Department on business, I was informed that Chief of Engineers, General Craighill, intended to resign, and that he would be succeeded in February, 1897, by Colonel John M. Wilson, which change would be followed by a general transfer of Engineer Officers, and that Captain Carter, who had been on the South Atlantic Coast thirteen years, would be one of the first to be transferred to some more important field."

He then states the confidence he had in Carter's ability and the interest his road had in the improvement of Cumberland Sound, which is the entrance to Fernandina Harbor, and relates the efforts he made through Mr. Cutting to have the Secretary of War, Mr. Lamont, use his influence with General Wilson, Chief of Engineers, to have Carter retained at Savannah, and attaches a letter dated Feb. 28, 1897, from Mr. Lamont to Mr. Cutting, stating that "I have arranged the Carter matter."

I do not question the accuracy of Mr. Duval's statement as to what took place in February, 1897. That General Wilson had at that time determined there would be no changes in the South until after Oct. 1, 1897, is stated in Goethal's letter to Carter of April 27, 1897, above quoted.

But that the Chief of Engineers had fully determined in May, upon relieving Carter from the Savannah work, to take effect in July, is shown not only by the event itself, but from Goethal's statement to Carter in said letter of April 27, 1897, that General Wilson "seems to have an idea, that should you go abroad to the Congress, some officer should be on the ground all the time"; and from Carter's letter to Abbott of April

29, 1897, asking for Stuart, and saying "General Wilson may not agree to this." And lastly from Duval's own letter of June 2. 1897, acknowledging Carter's letter to him of May 31, 1897, in which Duval makes the positive statement that his efforts made at Carter's instance to have Carter retained at Savannah were barren of results. Duval fails to explain the statements in this letter. Indeed, the letter speaks for itself in more certain language than Mr. Duval could if he had undertaken to explain it in his affidavit made nine years after the event.

CARTER MAKES EFFORT TO GET ON NICARAGUA CANAL COMMISSION AND SUCCEEDS.

On July 17, 1897, Carter sent a telegram to the Secretary of War, Complainant's Exhibit 17 (Shields), print. p. 270, as follows:

"July 17, 1897.

Hon. R. A. Alger,
Secretary of War,
Washington, D. C.

Confidential. Warner Miller states he will not permit me to become a member of Nicaragua Canal Commission. As you know, my capability, long and successful experience in just that class of work, and my desire that the Canal be built, I take the liberty of informing you of Miller's statement that he will dictate composition of Commission, and of expressing my hope that his attempt through improper motives to injure me will not succeed.

Shall reach Washington tomorrow.

O. M. CARTER."

Carter testified on cross examination that he was appointed a member of the Nicaragua Canal Commission on July 24, 1897 (Wyman Vol. 3), type. p. 909.

Under cross-examination, Carter testified he left Savannah July 17, 1897. That he met his successor, Capt. C. E. Gil-

lette, in Washington on July 19, 1897. That Gillette formally took charge at Savannah on July 20, 1897. That Carter sailed from New York for Europe Aug. 7, 1897. (Wyman Vol. 3) Type. p. 909, 910.

Carter sailed from England on return to United States, Sept. 4, 1897, and arrived in New York at night on Sept. 10, 1897. (Wyman Vol. 3) type p. 910.

P. 48. Note

*M. A. Connolly boarded the ship at quarantine and told Carter Gillette was raising trouble. (Vol. 13, p. 5874.)

Carter testified that under date of Sep. 10, 1897, Gen. Wilson, Chief of Engineers wrote him: "You are hereby placed under arrest. * * * The limits of your arrest to be the City of Washington." That he proceeded to Washington and on Sept. 11, 1897, after a personal interview Gen. Wilson canceled the order. (Vol. 14, p. 6306–8.)

Carter testified that Westcott joined him in Washington and they returned together to New York Sep. 13, 1897. (Vol. 13, p. 5874.)

He denied that he told Westcott on their return to New York that he expected to be arrested, because he did not expect it. (Vol. 4, p. 2101.)

The Board of Inquiry convened at Savannah to investigate Carter Sep. 22, 1897. (Vol. 2, p. 441.) Testimony was concluded before Board Oct. 29, 1897. (Vol. 2, p. 941.) The Board reported against Capt. Carter. (Vol. 14, p. 6310.)

The Court Martial convened at Savannah, Ga., on Jany. 12, 1898. (Vol. 3, p. 1057.) Carter having pleaded the statute of limitations was tried only on the specifications connected with the contracts let in 1896 and transactions within the 3 years' limitation. He was convicted, among other things:

(1) of conspiracy to defraud the United States.

(2) Wilfully causing false claims to be presented for payment.

(3) Embezzlement.

(4) Conduct unbecoming an officer and gentleman. (Vol. 18, p. 8982.)

This was reviewed by the Atty. Genl. and approved as to (1), (2), (3) Sep. 29, 1899. (22 Opin. Atty. Genl., p. 597.)

Carter was arrested and confined at Governor's Island, N. Y., Sep. 29, 1899, pending transportation to penitentiary. (Vol. 1, p. 187, and Vol. 10, p. 5034.) Habeas corpus was denied. *Carter* v. *Roberts*, 117 U. S., p. 496. Carter was landed in Ft. Leavenworth penitentiary Apr. 27, 1900. (Vol. 10, p. 4964.) He served sentence and was released Nov. 28, 1903. (Vol. 1, p. 187.)

THE GROWTH OF INTIMACY AND ASSOCIATION OF CARTER, GREENE AND GAYNOR IN PRIVATE TRANSACTIONS.

SCHEME FOR INVESTMENTS IN PINE LANDS.

On Nov. 2, 1885, Carter writes to John F. Gaynor concerning the purchase of pine lands in Georgia and using the expression:

> "It is not yet cold enough to go to work on our project, so I am looking up pine lands and *whooping up* the convention."

Carter's letter press book No. 1, page 248, from Box B 31, P. Exhibit 19, copied in record (Shields Vol. 1), p. 273. It appears that there was a convention held at Savannah in 1885 of delegates from different interior cities and towns for the purpose of influencing public opinion or Congress in getting big appropriations for Savannah harbor. It was this convention to which Carter above refers. Court Martial Record Vol. 18, p. 4092. Before the Court Martial in 1898, Carter testified as to the meaning of the expression, "It is not yet cold enough to go to work on our project," as follows:

> "I do not know, it may have been putting rice on one of those Islands for duck shooting. I do not remember what it was. I know we used to sometimes bait the places by putting on rice and the ducks would come down the river to get it."
>
> Court Martial Vol. 18, p. 4093.

In the present cause in 1905, some seven years later, Carter's knowledge had so far improved as to that transaction that he testified positively that the "project" alluded to was

for baiting rice fields for duck-shooting. (Wyman Vol. 6) print. p. 376. Whether this explanation is satisfactory will have to be considered in connection with subsequent transactions.

CARTER BORROWS MONEY AND RETURNS IT. 1886-1888.

In a letter from Box B 31, copied in Carter's letter-press book No. 2, page 333, in which the date is obscure, but which appears between letters dated January 3rd and 5th, 1888, Carter writes to Capt. B. D. Greene enclosing him a check for $299.50 for amount due by Carter to Greene, being a balance of an indebtedness of $1,600 borrowed April 15, 1886, per statement copied therein. P. Exhibit 22 (Shields Vol. 1), pp. 276, 277.

This statement shows $1,600 borrowed April 15, 1886, and numerous small payments on the loan running from July, 1886, to January, 1888, when the balance was returned.

Carter's Explanation.

Carter's explanation to Board of Officers, Sept. 23, 1897. Board Record, p. 240:

> "Q. Have you ever had any private transactions with any of those men, who you state belong to this Company, which would lead people to suspect in any way that you had something to do with the contract under the government?
>
> A. No, sir.
>
> Q. You had no such private transaction?
>
> A. Nothing, except I may have had Capt. Greene do little things for me, but they were of a private nature and not business. With the Gaynors I never had any transactions. I have had Capt. Greene do some commissions for me. I would write to him to make little purchases for me. I have had nothing which I would not have the whole world know. * * * I remember at one time going down to Florida with Col. Gordon, or for

him, about the time of the phosphate discovery in Florida, and Gaynor went down at the same time, and he said: 'If you find some phosphate, I would like to put some money in it.' But we didn't find any phosphate and we didn't put any money in it. I have never been under obligations to them in any way whatever."

Carter admits, so testifying on cross-examination (Wyman Vol. 3), type. p. 929:

The Board of Officers who had access to the papers from Box B 31, and to the letter of January, 1888, showing the $1,600 loan made by Greene to Carter in 1886, then sprung the information contained in that letter on him at page 260 of the Board Record as follows:

"Q. You said some time ago that you were under no obligations to any member of this firm, The Atlantic Contracting Company. I wish you would think of that and tell me whether it is strictly true?

A. That is strictly true.

Q. Have you ever borrowed money from any man associated with that company, or acting as agent of that company?

A. I borrowed money at one time, $1,600 from Captain Greene, and I repaid that to him. That was a private loan and I repaid him with interest; I paid him principal and interest."

Captain Carter on cross-examination admits so testifying before the Board, except that he claims that he said before the Board, "My brother borrowed at one time $1,600 from Captain Greene," and he claims that the stenographer took it down wrong, and that Captain Gillette would not let him correct it at the time. (Wyman Vol. 3) p. 932.

It is not probable that a Board of Officers composed of General Geo. L. Gillespie, Major Henry M. Adams and Major Charles W. Raymond would have allowed Capt. C. E. Gillette to control the record in the case. If Carter had proposed to make the corrections, they would have at least allowed him to testify to the corrections at the end of the rec-

ord. But was it a stenographer's mistake? If so, the stenographer made the same mistake the next day, Sept. 24, 1897. Board of Officers Record, p. 386, this question was put by General Gillespie:

"Q. When you borrowed money from Capt. Greene, were you under obligations to him?
A. To that extent I was, sir."

Carter admits this testimony, but claims the reporter got the question wrong. He says the question and answer were:

"Q. When your brother borrowed money from Capt. Greene, were you under obligations to him?
A. To that extent, I was, sir."

Carter now again says he wanted to make the correction at the time, but Capt. Gillette objected.

Again, Major Raymond, another member of the Board, evidently understood Carter's previous testimony in the same way. Page 386 of Board Record puts this question to Carter:

Major Raymond:

"Q. At the time when you borrowed this money from Capt. Greene, was Capt. Greene a contractor, or connected with contracting?
A. That I am not sure about, Major. It was a long time ago when my father died and I don't remember."

Again, on page 344 of Board of Officers Record, Carter was questioned and answered as follows:

"Q. You testified on yesterday that you had no business relations with B. D. Greene. You have admitted that you borrowed $1,600 from him. Was this $910 in part payment of that loan?
A. No, sir, I think that it was this, if I remember right, I had him make a payment to a woman in New York, I think it was in that way."

Carter now says (Wyman Vol. 3), p. 970, that the reporter made a mistake again in taking down the question, that it should have been reported:

"Q. You have admitted that your brother borrowed $1,600?"

Again Board Record, p. 353 is:

"Q. When you came to Savannah some years ago, you borrowed $1600.00 from B. D. Greene. What resources did you have at that time of your own?

A. I had very little."

Carter now says (Wyman Vol. 3), p. 970, that the reporter made a mistake and question should have been reported "your brother borrowed $1600.00."

Now it is utterly improbable that the reporter should have reported the questions of same substance wrong every time, and that the different members of the board should have so understood it.

Carter's Explanation Before the Board in His Final Written Statement, October 23, 1897.

On Oct. 23, 1897, Carter made a final written statement to the Board of Officers, which accompanies the Board Record, and on page 51 of that statement, after stating that he had refreshed his mind by examination of his papers, he says:

"On April 15, 1886, my brother borrowed some money from Captain Greene, its repayment being assured by me. Captain Greene had no interest then in any works under my charge. The entire sum was repaid Jan. 4, 1888, with interest at six per cent. I have not now and never have had business relations with any contractor doing any work under my direction."

Carter's Explanation Before the Court Martial, 1898.

Court Martial Record Vol. 17, p. 3903:

"A. I remember the transactions very well. My father was ill of an ailment from which he died shortly after, and my younger brother who was at home taking care of him, needed some money, and Capt. Greene allowed him to have that, and I assumed the repayment or told him that I would be personally responsible that it was repaid, and I was, and did repay it.

Q. Was it money actually loaned by him, Capt. Greene?
A. Yes, he sent it to my brother in Ohio.
Q. And actually repaid by you?
A. I think my brother repaid part of it. I repaid the rest. I considered it mine practically. I was responsible for it, and of course it was through me my brother knew him, and I had met him the year before or two years before here, and the contracts were finished, and I went to him and asked him if he would mind lending my brother that amount of money, and I would be responsible for it; and he told me he would. He did so."

Carter's Explanation in Present Case, 1905.

(Wyman Vol. 2), print. p. 370:

Mr. Stone:

"Q. State the circumstances under which it was made and what connection General Gillmore had with it.
A. My brother wrote to me that my father was dying, that there was a small mortgage on his property, which fretted him very much, and he asked me if I could loan him the money to liquidate that mortgage. I did not have the money and went to New York to see General Gillmore, to ask him to loan it to me, and he told me he did not have it.
Q. Did you ask him to loan it to you?
A. Yes, sir, but he suggested that Captain Greene, who had been an officer in our Corps, and who was then in business, might have the money, and suggested that I go to him. Captain Greene was then living, as I recall, at the New York Hotel, and I went to him and stated the circumstances to him, and he said that he would loan my brother the money.
Q. How much?
A. $1600, and he gave me a check to him for that money, and my brother used that to pay off the mortgage on my father's property held by a man named Wilgus."

Under cross-examination (Wyman Vol. 3), type. p. 971, he repeats this statement, and says that it was his "younger brother" (I. Stanton Carter), to whom he referred, who was at home in Ohio with his father. Under cross-examination (Wyman Vol. 3), type. p. 984, he admits his brother was not with him when the money was obtained and that he alone saw Greene.

Was Straight Loan from Greene to O. M. Carter.

Complainant's Exhibit 601, letter and statement of April 16, 1887, copied in Carter's letter press book No. 2, page 204, from Box B 31 (Wyman Vol. 3), type. pp. 976-977, is an account rendered by O. M. Carter against the estate of his father, R. T. Carter, with items running from Sept. 26, 1883, to Jan. 3, 1887, and aggregating $2,060.76.

Among the items is one dated April 17, 1886—$1,635.76. Under cross-examination (Wyman Vol. 3), type. p. 974, Carter testified:

"Q. That item though in that account, which you charged against the estate, is $1635.76; $1600 of it representing the loan which came from Captain Greene. did it?

A. Yes, to my brother.

Q. And the other $35.76 paid was the money that you furnished?

A. Yes, sir.

Q. And you have got it charged in this account rendered to your brother as Administrator, which you rendered on April 16, 1887?

A. That is right.

Q. Now, on the bottom of this letter of April 16, 1887, from you to your brother, enclosing that statement, is a pencil memorandum which reads as follows: 'Accepted May 19, 1889, See letter.' I will ask you whether or not that memorandum at the bottom is in your handwriting?

A. It is."

Now this $1600 loan had been fully paid up by final remittance by Carter to Greene in January, 1888, as shown by Carter's letter and statement to Greene. P. Exhibit 22 (Shields Vol. 1), pp. 276-277, heretofore referred to. Yet on April 28, 1889, Carter sends his brother, I. Stanton Carter, a letter, demanding the payment of the $2060.76 loan (which included the $1600 received from Greene in 1886) including receipts dated March 1, 1889, for the same. P. Exhibit 602 (Wyman Vol. 3), type. pp. 978, 980. In this letter Carter says:

"SAVANNAH, GA., Apr. 28, 1889.

Dear Bro.

I send you two receipts, one for the bare debt and one for the debt and interest, which you gave. Use which you prefer and destroy the other. Do not forget that I advanced the money to pay White & Holcomb, viz., $60, for which I sent receipt to you. It is not that I want the money, but don't forget that it is *due* me. Now shall you send me my money. I prefer it in cash, etc."

Copy Receipt (1) Inclosed.

"SAVANNAH, GA., Mar. 1, 1889.

Received of I. Stanton Carter, Admr. of the estate of R. T. Carter, dec'd, the sum of Two Thousand and Sixty 76/100 ($2,060.76) Dollars in full of my account against said estate.

O. M. CARTER."

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Under cross-examination (Wyman Vol. 3), type. p. 980, when this letter was produced from his letter press-book from Box B 31, Captain Carter testified as follows:

"Q. This letter indicates, Captain Carter, that at that date, April 28, 1889, you had not been repaid for that $1635.00 and that you were demanding payment from the Administrator of the estate at that time, does it not?

A. Well, the letter refers to the total indebtedness of $2,060.76 which of course, includes the item of $1635.76.

Q. Well, it shows then that at that time, April 28, 1889, you were still claiming that as a debt due you from the estate?

A. That is right."

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Under cross-examination (Wyman Vol. 3), p. 974, Carter testified:

"Q. If your brother borrowed it, what are you doing, charging it in your account against the estate?

A. Because, I endorsed his note and was responsible for it, and repaid the money to Captain Greene."

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Yet Carter had testified under cross-examination (Wyman Vol. 3), type. p. 970:

"The facts are. I never borrowed a dollar from Captain Greene in my life, but my brother, upon suggestion of Gen. Gillmore, did borrow $1600 from him in 1886, which he and I repaid, as stated in my direct testimony."

Contracts Running.

The following contracts in which B. D. Greene was interested, were in operation in the Savannah District preceding and during the time this $1600 loan from Greene to Carter. See original contracts in evidence or printed volume of contracts in the record by agreement.

. of hibit.	No. of Contract.	Date.	Contractor.
9	2744	Sept. 1, 1884.	John F. Gaynor.
6	2933	Dec. 5, 1884.	E. H. Gaynor.
7	2934	Dec. 5, 1884.	E. H. Gaynor.
4	3282	Oct. 28, 1886.	John F. Gaynor.
5	3282 Sup.	Dec. 22, 1886.	John F. Gaynor.
1	3285	Oct. 29, 1886.	Anson M. Bangs.
7	3307	Oct. 30, 1886.	E. H. Gaynor.
8	3392	Feb. 9, 1887.	John F. Gaynor.

For the evidence connecting B. D. Greene and John F. Gaynor with each of the above contracts, see post, pp. 106, 9, 111, 114. Under cross-examination (Wyman Vol. 3), e. p. 987, Carter testified:

"Q. You were on notice then, by reason of having met Captain Greene in Savannah, in connection with the work done there and by reason of this letter of General Gillmore's and other things, that Captain Greene was connected as early as 1885 and earlier, in the Savannah contracts, were you not?

A. I was. These contracts were all ended, however, in September, 1885."

It is immaterial that there was no contract work going on April 15, 1886, when the loan was contracted. Carter knew that he was going to a man who had been regularly engaged in contract work over which he had supervision. That under General Gillmore's project for improvement for Savannah harbor, a new contract (No. 3282) was about to be ad-

vertised as it was advertised Sept. 11, 1886, and these men in the business would most probably be bidders.

Moreover, he let the loan run until January, 1888, during which time a large number of contracts were let to the same contractors.

In his direct testimony before Examiner Wyman in 1905 (Wyman Vol. 2), print. p. 371, Carter testified:

> "Some time in the winter of 1887 and 1888, in a conversation with General Gilmore, we decided that it would be better, in view of the fact that Captain Greene was interested in this contract it would be better for me to pay up that loan entirely and be under no obligations whatever to him."

No one acquainted with General Gillmore's military record, which is historical, or who will consider the tight rein he held over the contractors, and over Carter, in dealing with them as evidenced by some of his letters which will be referred to in this record, can credit Carter's story, that Gillmore in 1886 sent his young subordinate, Carter, to borrow money from Greene, a contractor, and that he knowingly allowed that relationship to exist between them under the series of contracts running in the Savannah district from 1886 to 1888, and only awoke to the impropriety of it in January, 1888.

Now, it is utterly immaterial for the purpose of showing improper intimacy prior to the conspiracy but leading up to it, whether Carter borrowed the $1600. in his brother's name or in his own. It is not claimed that Greene even knew this younger brother out on the farm in Ohio, and it is admitted by Carter, the loan was made on his own credit. The varying statements which Carter has made in reference to it, as fact after fact is brought out, is strongly illustrative of the method he has pursued from the beginning.

JOINT ENTERPRISE IN MARBLE QUARRIES, 1888.

On May 24, 1888, just a month after Carter had been placed in complete charge of the contract work in Savannah, in which his business was to supervise the contracts then controlled by Greene and the Gaynors, he writes to Capt. B. D. Greene, Carter's Letter Press Book No. 2, page 415, in relation to proposed joint enterprises in a gas company, in an air jack for cotton, and marble quarries. In relation to the marble quarries Carter says (Exhibit 24, Shields Vol. 1), p. 280:

> "I have just been offered a chance in a marble quarry which looks well.
>
> * * * * *
>
> There are only about five men in it and they are the best in Savannah. If it proves what we believe with an investment of $10,000 the yield annually net ought to be $120,000 with larger yield by increase in plant. If it amount to anything of course I want you to go in with me, but say nothing to John as this is outside matter. I hear nothing further about the railroad."

An August 23, 1888, Carter writes Captain B. D. Greene (letter copied in Carter's letter press book No. 2, page 499, as to investments in timber, and further saying: (Exhibits 25-A, Shields Vol. 1), p. 283:

> "I saw Olmstead (stenographer spells it Huestead) about the marble and he says that he learns that a very badly shattered specimen was shipped to New York. There is a good specimen now at Rome. Please see if the sample in New York is suitable. If not, I will have the other piece shipped."

This letter was addressed to "My dear Captain" and was not indexed. The fact, however, that it was intended for Captain Greene is indicated by its context when compared with the previous letter of June 11, 1888, above referred to, and which letter was indexed by Carter in the name of B. D. Greene. Carter admits this. (Wyman Vol. 6) print. p. 380.

On September 1, 1888, Carter writes to Captain B. D. Greene (Carter's letter press book No. 2, page 510, P. Exhibit 25) (Shields Vol. 1), p. 285:

> "I leave for Rome tonight to secure lease for lands and begin work as required by lease. I rather think that only Olmstead (stenographer spells it Huestead), Hull and Lathrop will remain in, in which case they have already agreed to share equally with me. I have many things to talk to you about. I have also got my eye on some coal lands near Birmingham. * * * Can you meet me in Washington, etc."

This letter is not indexed but the context shows when compared with the previous letters that it was intended for Captain Greene, and Carter admits it. (Wyman Vol. 6) print. p. 380.

On Sept. 23, 1888, Carter writes to Captain Greene (Carter's letter press book No. 2, p. 518) relative to marble quarry scheme. P. Exhibit 25-C. (Shields Vol. 1) p. 286.

> "I had the block of marble shipped to Evans and wrote him to send it up to Batterson, See and Eisele."

On Oct. 25, 1888, B. D. Greene, from Hoffman House, New York, writes to O. M. Carter at Savannah, a letter, Exhibit 8, from Box B 31 (Shields Vol. 1), pp. 250-257:

> "The block of marble is at B. S. & E.'s and has been for two weeks. Mr See says he can do nothing with a block of such irregular quality."

Carter's Explanation of the Marble Quarry Scheme.

On Sept. 24, 1897, Carter stated to the Board of Officers (Board Record Vol. 1), p. 385, which he admits (Wyman Vol. 3), p. 962:

> "Q. Did you ever *take an interest* in a stone quarry?
> A. Yes sir, but I didn't put up the money. Other men put up the money.
> Q. Did you have any correspondence with Capt. Greene as to the sale of this stone?
> A. Yes, sir.

Q. Could you properly have had such correspondence when Captain Greene was agent for the contractors under this contract?

A. I think so, Major, because there was nothing which I did from which I received any benefit. It was a personal correspondence which I carried on with him, and which I felt at liberty to carry on with any contractor, my feelings being that so long as I did not use them for any purpose, or make anything out of them, or put myself in the way of business under obligations to them, it was all right."

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In Court Martial Record Vol. 17, p. 3909, Carter testified:

"Q. You refer in the same letter to a block of marble shipped to Evans?

A. He was a commission merchant, I think, in New York, and I shipped it to him and told him to deliver it to Batterson, See & Eisele.

Q. That is the same marble quarry about which you have testified?

A. Yes."

In his direct examination before the Examiner (Wyman Vol. 2), print. 371, Carter testified:

"A. I suggested having some interest in connection with a marble quarry, some phosphate mines, and other things which were to be managed by gentlemen in Savannah whom I knew, and in which if they succeeded, Captain Greene and Col. Gaynor were to be interested, but nothing ever came of any of those matters."

Now this explanation is very evasive, but sufficient appears from the letters and admissions to show:

(1) That about May, 1888, Carter and five Savannah men discovered what they supposed to be a marble quarry near Rome, Georgia.

(2) That Carter suggested that Greene have an interest in it on Carter's share and that Greene was to be interested in it.

(3) That Carter shipped a specimen of the marble to Batterson, See & Eisele, New York, for the purpose of having its quality tested.

(4) That he writes to Greene, Aug. 23, 1888, to see if the sample shipped to New York is suitable.

(5) That on Sept. 1, 1888, Carter went to Rome to secure a lease for the lands and begin work.

(6) That Carter admits that while the others interested put up money for the project, he did not put up anything.

(7) That Greene writes to Carter that Mr. See said he could do nothing with a block of marble of such irregular quality.

For the purpose of showing intimacy between the parties in joint private enterprises prior to the time of the conspiracy but leading up to it, it is immaterial that the enterprise was a failure.

PAVING COMPANY.

On Sept. 23, 1888, Carter writes to Captain Greene (Carter's letter press book No. 2, page 518), relative to organizing a paving company with certain parties in Savannah, and saying (P. Exhibit 25-C) (Shields Vol. 1) p. 286:

> "I have nothing to invest just now as my money is tied up at home in Ohio, but I thought you and John might like to take $1,250 or $2,500 worth of stock, 25 or 50 shares. * * * Let me know if you wish to venture in it. * * *"

Carter's Explanation of the Paving Company Project.

In Carter's direct examination before Examiner Wyman (Wyman Vol. 6), print. p. 381, he says:

> "A. I wrote that letter to Captain Greene saying I had been offered an opportunity to invest in a paving

company in Savannah in which were some very prominent people of Georgia.

Q. You stated in that letter, did you not, that you did not have any money to invest, but that Greene and Gaynor might possibly want to go into some scheme of that kind?

A. Yes sir. I think it was the suggestion of Mr. Cumming of Savannah, who spoke to me about the matter, so I suggested that perhaps they would like to take some interest in that. * * * Yes sir. I had nothing to do with that, I just suggested that if they would like to do it they might, but they did not."

The Government does not claim that they did go into the paving company, but the proposition taken in connection with the other schemes shows the progress of their intimacy in private transactions.

THE AIR JACK SCHEME, 1888.

On May 24, 1888, in a letter from Carter to Greene, Compl. Exhibit 24, (Shields Vol. 1), p. 280, from Box B 31, from Carter's letterpress book No. 2, page 415, Carter says:

"Be careful about the air jack, and not let any inventor steal our ideas and leave us out. Hydraulic Jack will not work as the cotton gets wet.

I cannot find out the pressure applied in stowing cotton, but it is the maximum used by the old screw jack, which you have seen. I was put on the track by Mr. Minis, who agreed to go halves with me. I think we can assay to give him 1/4 and you, John and I take 1/4 each if it comes to anything. Keep a record of the expense and I will share that anyway, but above all things don't let someone steal our thunder, as I believe there is something in it."

On Nov. 22, 1888, in letter from Carter to B. D. Greene,

Complainant's Exhibit 26, from Carter's letterpress book No. 3, page 71, from Box B 31 (Shields Vol. 1), p. 289, Carter says:

"I spoke to Mr. Clay and he deems it feasible and he agrees to let the jack with all its possible developments, and with reference especially to its use as a motor, go to us. I gave him $100.75 for his traveling expenses and I have his receipt. I did not talk much of the business part to him as I told him I preferred that all of that should be conducted through you, you being nearer him.

He says he wishes to draw up an agreement and sign it at once so that we can understand each other and know what we are doing. I told him that I wished you, Gaynor, Minis and himself with me in the Jack, but only Gaynor, himself and myself in the cotton tying business.

He says he is perfectly willing to enter into any agreement we wish, and I told him I would write you my ideas on the subject and then he could draw up the agreement with you which would be perfectly satisfactory to me.

I also look to the pneumatic jack to replace all hydraulic presses for compressing cotton, for forging gun steel, etc., as well as to use as motors on cars, etc. * * * He (Minis) will doubtless want more than 1/5—will perhaps not want Gaynor in—but I can manage all that. I have advanced all the money, done most of the work, &c. so he can not justly claim more than I have said. I told him that the patents, &c. were all on hand, which I meant to indicate that you would look after them.

Whether or not the patents are taken out in our names jointly, or in Clay's alone, you must determine, but be sure they are safe."

Carter's Explanation of Hydraulic Jack Project.

Under cross-examination before the Examiner (Wyman Vol. 3), type. p. 949, Carter testified:

"I think the second in point of date was concerning a hydraulic Jack. That was a scheme for stowing cotton in ships. Prior to that time, it had been stowed by negro labor, and Mr. Minis, a cotton shipper, suggested that if a machine could be invented that would stow the cotton more closely it would be very valuable and several

of us started in to try to get up such a machine, and I had some correspondence with Captain Greene concerning that, but nothing ever became of it.

Mr. Stone:

Q. How much money did you put into it?

A. I think $40 or $50. Maybe $100. I do not recall. We had a man named Clay who was an expert in pneumatic transmission and all we paid was to him, and it was divided up among about a dozen people, I have forgotten who they were. That was in 1888 as I recall it * * *

Mr. Erwin: Q. Was Greene or Gaynor interested in it?

A. Yes, I understood Captain Greene was too, and I think also Mr. Gaynor. That was in 1888,"

THE GREAT CHILI SCHEME, 1888.

Major Frederick V. Abbott, who was the same Lieutenant Abbott who was located in 1888 at Charleston, S. C., while Carter was at Savannah, Ga., testified (See Ante p. 40) that in the summer of 1888 Carter expressed in a conversation had with him, his intention of resigning from the army and entering into contract work with Captain Greene. (Wyman Vol. 9.) (Type. p. 4638.)

On Sept. 23, 1888, Carter writes to Captain Greene (Carter's letterpress book No. 2, p. 518, from Box B 31), (Shields Vol. 1), p. 286:

"I sincerely hope the Chili scheme is not a paper one only. It looks too bright to last."

On Oct. 25, 1888, B. D. Greene, from Hoffman House, New York, writes to O. M. Carter at Savannah, a letter Exhibit 8, from Box B 31 (Shields Vol. 1), pp. 250-257:

"Dear Carter. Yours at hand could not do dredging as cheap as you say and work only 4 months in two years. * * * The block of marble is at B. S. & E's

and has been for two weeks. Mr. See says he can do nothing with a block of such irregular shape and quality. * * * As John goes to Chile Thursday, Nov. 1st, we can't very well handle the matter even if it were good, which I doubt. About six mo's from now $6,000,000 harbor work is coming up in Chile and we have assurance of our ability to get it. We are now looking for a first class man to go with John as an expert. The first thing we shall tackle will be a tunnel 3,000 feet long and we can have as many millions R. R. work proper as we choose to take, probably we shall go for about $4,000,000 contract. * * * We have the preference and John goes down on the ship with the general manager of the syndicate so you see our show seems good. Now I want to do up Charleston, Savannah and Fernandina by July 1st next, so that we can go down by that time if not before. This I think is the chance of our lives. Now let that dredging so John and I can sell out our stock and hurry up the two works all you can so we can get going by New Year's. This is important.

This Chili business is business and I think within 90 days we shall be into that tunnel. What do you think of this? Of course the scheme I outlined when I first wrote you about Chile a month or more ago will be carried out, and a year hence will find us both struggling with the Spanish lingo. * * * Put that dredging through on the basis of working only a part of every other year and no outside work and you will see it is worth 18c. to 19c."

In letter of Apr. 28, 1889, of John F. *Gaynor* to *Greene*, Exhibit 9 (Shields Vol. 1), pp. 250-258, *from Box B 31*, it is indicated that the act of the Chile Congress upon which the scheme depended had not then passed. And it does not appear to have ever materialized.

On Nov. 22, 1888, Carter writes a letter addressed to Captain B. D. Greene (Carter's letterpress book No. 3, p. 71, copied 289), relative to the Chile scheme and to the pneumatic air jack for stowing cotton, and referring to Mr. Clay, says, Exhibit 26, *Idem* 253-289:

"I told him that I wished you, Gaynor, Minis and himself with me in the jack, but only you, Gaynor, himself and myself in the cotton tying business." And saying:

"Whatever the Chili business comes to, this appears to be certain, and if Clay can only do his share there is no doubt of great financial success."

Carter's Explanation of Chile Scheme.

Court Martial Record Vol. 17, p. 3901.

"Q. Now, I will ask you first, if you have had any interest in any way, shape or form, in this Chile matter?
A. No, none whatever."

Carter, direct before Examiner Wyman (Wyman Vol. 6), print. p. 381:

"I had a friendly interest in it, but I had no idea that there was anything improper in that letter."

He further testifies (Wyman Vol. 6), print. p. 382:

"There is a letter from Mr. Gaynor to Captain Greene, which I presume Captain Greene must have showed to me, because it was found among my files, indicating that the scheme which he and Captain Greene had intended to enter into in Chile had failed to materialize."

But why should he write to Greene Sept. 23, 1888:

"I sincerely hope the Chile scheme is not a paper one, it looks too bright to last."

Why should Greene write to Carter, Oct. 25, 1888:

"Of course the scheme I outlined when I first wrote you about a month or more ago, will be carried out, and a year hence will find us both struggling with the Spanish lingo."

Why should Carter write to Greene Nov. 22, 1888:

"Whatever the Chile business comes to, this appears to be certain."

What was Gaynor's letter to Greene of April 28, 1889, stating that the Chile scheme had fallen through, doing among Carter's papers? And why did Carter tell Lieutenant Abbott in the summer of 1888 that he contemplated resigning and going into contracting with Greene and about the Chile scheme. (See Ante p. 40.)

CONSTRUCTION OF CINCINNATI R. R. TERMINALS, 1888.

Complainant's Exhibit 604, from Box B 31, is a letter dated July 20, 1888, from George MacNeill, New York, to O. M. Carter. (Wyman Vol. 3) type. pp. 996-997, it reads:

"NEW YORK, 20th July, 1888.

My Dear Carter:

When I last saw Captain Greene he gave me his address in Southampton, L. I. I have written him 3 times to that address, & the letters have all come back to me thro the dead letter office.

We are now on the eve of important developments in Ohio; & I want to keep Capt. Greene posted up, so that he may, when the time comes, make up his mind whether to cut in or not.

With every good wish to you, I remain,

Yours very truly,

GEORGE MACNEILL."

Complainant's Exhibit 605, is a letter from Mr. Geo. MacNeill to Captain Greene, found in Carter's papers, Box B 31. (Wyman Vol. 3), type. p. 1,004, it reads:

"NEW YORK, 26th July, 1888.

Dear Captain Greene:

Three letters having been returned to me thro the dead letter office from Southampton, I wrote to Carter for your address & have received it this morning. Our plans are now fully matured, and the list made up except the plan left for you.

If you are ready to come in (& I think I can arrange without any money from you) please see me here not later than Monday next.

As I am stiff & all but useless from rheumatism, you had better meet me at Hotel Bradford making an appointment beforehand so as to ensure our meeting.

I am *very much* pleased with the programme & I think you & Carter will be so also.

Yours truly,

GEO. MACNEILL."

Carter admits cross-examination (Wyman Vol. 3), type. p. 996, that he received the letter, Exhibit 604, from MacNeill.

Carter explained this transaction before the Board of Officers in September, 1897. (Board Record Vol. 1) p. 291, as follows:

"The Pennsylvania Road had a piece of property in Cincinnati, and I went to look at that with a foreman by the name of McNeill, but nothing whatever was done about it.

Q. Do you consider that you could properly have even that business relation with those men and at the same time look after the interests of the United States, they being large contractors in this district?

A. Yes, sir. I felt that I could, because nothing passed between us in any way that put me under obligations to them."

Under cross-examination before Examiner Wyman (Wyman Vol. 3), type. p. 1,001, Carter testified:

"Q. You say 'as far as you know,' Captain Greene had nothing to do with the construction?

A. Oh no, I do not, I say Captain Greene was in Cincinnati with MacNeill and looked at this piece of property, and that is the end of it so far as I know."

And (Wyman Vol. 3), type. p. 999, he testified:

"A. I can tell you all the facts about that, Mr. Erwin. I lived in Ohio and some time, I think in 1887 or 1888, I went out home, and Mr. MacNeill met me in Cincinnati. He had an idea that he could get hold of a road which at that time was not entirely constructed, running from Cincinnati to Portsmouth up through my old home, I have forgotten what the name of the road was, and they owned no terminals in Cincinnati; and he asked me if I would not look at a piece of property owned by the Pennsylvania Railroad to see whether or not they could not make arrangements, and if so, to get my idea what it would cost to tunnel a hill. I went out there and he failed to finance it. Captain Greene did not go into it, and there was nothing done, that is the end of it; and for some time afterwards, Mr. MacNeill, who was a promoter and had relations with various railroads, when he heard of various schemes, would write to Captain Greene, and I having been with him at that time, he sometimes wrote to me, and I spent one summer where he was a great part of the time."

Now this is a very rambling explanation, but from it in connection with the letters, this much appears:

(1) That MacNeill was contemplating building a tunnel in connection with a contract for railroad terminals at Cincinnati.

(2) That Greene and Carter were there in Cincinnati with MacNeill, looking over the contemplated work.

(3) That Carter spent one summer where MacNeill was in connection with the project.

(4) That Carter was to make an estimate of the cost.

(5) That MacNeill who, Carter stated before the Board, was a "foreman" was in reality a "promoter" and that he failed to finance the project.

(6) That Captain Greene "did not go into it, and that there was nothing done."

Now the Government does not contend that this contemplated joint enterprise came to anything, but the relationship between the parties is as well shown by what they tried to do together as by what they did do.

PHOSPHATE ENTERPRISES.

CARTER WRITES TO BORROW $2,000. FROM GREENE, 1889.

In his direct testimony before the Examiner in 1905 (Wyman Vol. 2), print. p. 371, Carter testified in regard to his final payment in January, 1888, of the balance on the $1,600 loan from Greene as follows:

> "Some time in the winter of 1887 and '88, in a conversation with General Gillmore, we decided that it would be better in view of the fact that Captain Greene was in-

terested in this contract work, it would be better for me to pay up that loan entirely and be under no obligations whatever to him; and I think it was in January, 1888, I paid the balance of the loan with interest at six per cent., on the entire loan, and from that day forward neither I nor any one connected with me in any way ever received one penny of money directly or indirectly from any man doing work under my supervision."

If such a conversation was ever had between General Gillore and Carter, the moral of the advice seems to have been tally wasted on Carter.

On May 26, 1889, Carter addressed a letter to Captain B. . Greene (Carter's letterpress copy book No. 3, page 260, rom Box B 31), copied in record, (Shields Vol. 1), p. 292, elative to a Florida Phosphate project as follows:

"I saw Gordon yesterday and told him I wished the same parties as before, viz.: you, John, Comer, himself and myself, in it. He objected, said he wished to share equally with me, but did not wish to admit others, &c., said this was a new deal, etc. It was much as I anticipated, but of course you, John and I go in on my share, which may amount to something.

Gordon and I drew up articles of agreement and we each put in $500 to get options and bonds for titles, agreeing to put up $2,000 more each to complete purchases if all is satisfactory. It was thought best that I should go to Fla. on Tuesday morning, if Shepard's report is favorable, and buy at once. Gordon left last night and will not be here for a week.

Shall you be here within a week? If not, can you manage to let me have $2,000 if I should need it? I don't want that we should be frozen out of a good thing. I'll write you again tomorrow night, after I see Shepard and before going to Florida.

Gaynor is not here and I have not seen him in some days."

The above letter in Carter's letterpress book is addressed "Dear Captain" and Carter admitted on cross-examination Wyman Vol. 3), type. 991, that he wrote that letter to reene.

In Carter's check-stub book, Merchants National Bank of Savannah, Exhibit 41, offered (Shields Vol. 1), p. 1,001, from Box B 31, on stub 109, there is the following entry:

"No. 109. May 27, 1889.
O. M. C. $500.
Part of Phos. Adventure."

On back of same stub is the following entry:
"Deposited May 28, 1889, $1,000.00."

Carter's Explanation before the Court Martial.

Carter testified before the Court Martial, Court Martial Record Vol. 17, p. 3,910:

"Q. You speak in that letter of the probability of your wanting to borrow $2,000 from Captain Greene; did you *borrow* any?

A. No. I *suggested that* because I thought that if it was found that there was phosphate there, I would have to put up that amount, or else somebody else would come in, and I wanted to be prepared, so that in case of necessity I would know somewhere, where I could get temporarily that amount, but nothing ever came to anything, and I paid my share, and this gentleman here, (alluding to some gentleman in Savannah), paid his share of our expenses, which I think amounted to about $35 or $40 a piece, and that is all we ever did.

Q. And you never went into that with Captain Greene or anybody else further than you have stated?

A. No."

Carter's Explanation before the Examiner, 1905.

Before the Examiner, (Wyman Vol. 3), type. p. 950, Carter on cross-examination testified:

"He (Colonel Gordon) and I entered into an agreement that we should pay in $500 apiece, and I should

go down and look over the territory and see whether there was phosphate there. I put in $500 which I had, and he put in $500, and I then wrote to Captain Greene to whom I had spoken before, some time before concerning the prospect of discovering phosphate in Georgia, concerning these facts, and suggested to him, he and Mr. Gaynor might like to go in, and if so whether, if I needed it, he could send $2,000, the idea being that a certain amount of money would be put up, if phosphate was discovered, but Prof. Shepard of South Carolina, reported there was nothing in it.

Q. You say Captain Greene was to 'put up,' do you mean loan you $2,000?

A. No, not loan $2,000 but send $2,000, because if they came in, *it was proposed they should come in as partners*, just as Colonel Gordon and I did.

Q. It was not to be a loan to you?

A. No, sir."

Carter explains the checks and deposits as follows (Wyman Vol. 3), type. p. 960:

"A. On May 27th (1889) I drew out myself in cash to my own order $500 to be used on this phosphate deal.

Q. That is what you have got on the stub, account of Phosphate venture?

A. That is right. General Gordon gave me his check for $500.

Q. Where is the entry of that?

A. I have not the entry here, but I have the deposit here, of May 28th of $1000; that is, the $500 I drew out and Gordon's.

Gordon gave me $500, I drew out my own $500, and then deposited this entire $1,000 in my bank account on May 28th, see? And then I gave Gordon a check for his $500 on June 7, 1889.

Q. Did you deposit those two things to make the $1,000; you say you deposited $500 yourself?

A. That is my recollection at present, Mr. Erwin. I have not all of the records, but I drew out $500. Here is how we were going to handle this thing. I was going down to the Peace River District, Florida, but it was suggested I should handle the thing, and Gen. Gordon gave me a check of W. W. Gordon & Co., signed by their cashier, and my impression is I deposited that together

with the $500 of my own, which I had drawn out, so as to check against it, instead of taking it in a check. When I did not use it, I returned on June 7th to Gen. Gordon his $500."

Now it is utterly immaterial for the purpose of showing improper intimacy between Greene, Gaynor and Carter, leading up to the time of the conspiracy charged, whether as is the plain import of Carter's letter to Greene of May 26, 1889, and as is the plain import of Carter's testimony before the Court Martial above quoted, Carter wrote to ask a loan of $2,000 from Greene, with the understanding that Greene and Gaynor were to be let in on the deal if the report of the expert was favorable, or whether it be as Carter testified finally before the Examiner as above quoted:

"Not loan $2,000, but send $2,000, because if they come in, it was proposed they should come in as partners, just as Col. Gordon and I did."

The relationship here proposed by Carter was worse than if he had borrowed $2,000 outright from the contractors.

Carter's explanation that the expert reported unfavorably on the samples, and that project fell through is utterly immaterial. That he should have written to borrow the money or to have it advanced to him by the contractors as an advance on a partnership interest with him in a private venture, and that too, the very next year after he claims Gillmore had advised him against being under obligations to the contractors, is sufficient to show that his mind and morals were ripe for the conspiracy.

THE CURTIS CHARGES, 1889.

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From Defendant's Exhibit 116 (Wyman Vol. 6), p. 386, it appears that on June 26, 1889, Col. R. P. Hughes, then Inspector General of the Army, made a report upon certain

charges which had been made in a newspaper published in Savannah relative to the relations existing between Greene, Gaynor and Carter, in which after investigation he fully exonerated Greene, Gaynor and Carter, and the report was published by direction of General Casey, then Chief of Engineers. Col. Hughes was not himself a member of the Corps of Engineers.

Some of these charges were based upon affidavits made by a Mr. W. R. Curtis, civil engineer, who had been an assistant to Gillmore and Captain Carter in the Savannah District for several years, but who, after making to Captain Carter certain charges against Greene and Gaynor, had been allowed to resign or was discharged by Captain Carter about January or February, 1889.

Captain Carter testified as to this in 1905 before the Examiner (Wyman Vol. 6), print p. 385, as follows:

"Q. What next is there?

A. There were introduced by Mr. Erwin some extracts of a letter from me to Captain Greene, dated June 6, 1889, stating that in February, 1889, an assistant of mine named Curtis came to me and stated Greene had tried to bribe him, and so forth. I then told him he would have to meet Captain Greene in my presence. I then sent for Captain Greene and when he came to face him, Curtis confessed his story was false, but he excused himself by saying he had a grudge against Greene and wanted to get even. I told him it was not a decent way to act and I allowed him to resign. Then later he made an attack on me, alleging I was in collusion with Captain Greene. I immediately demanded an investigation, and an investigation was made of the entire matter."

The specific charges which the Hughes Report states were made by Mr. W. R. Curtis, were the following (Wyman Deft.'s Exhibit 116):

"(1) Permitting contractors to throw stone on the cross-

tides dam, where it was of no benefit, in order to save demurrage.

(2) That Greene and Gaynor went to Washington and effected the reletting of a contract in order that they might secure it.

(3) That on this coast, the South Atlantic, bids are not numerous, and many of them are bogus straw bids.

(4) That the advertising for contracts is done in such a way that few contractors know about them.

(5) But money is wasted, I am satisfied from what I have noted, and what Greene told me.

(6) That a contractor by the name of John F. Gaynor, intimated that it would be to the pecuniary advantage of W. R. Curtis to accept the position of engineer or inspector the coming winter.

(7) That B. D. Greene, a partner of Gaynor, renewed the above proposition of Gaynor stating that he would add to my salary $500 a month; would get Lieutenant Carter to increase my salary.

(8) Misapplication of public money at Cross-Tides Dam, or incompetent engineering."

The time when Greene was claimed by Curtis to have made the proposition to bribe him was fixed by Curtis according to the Hughes report as being while Greene was on a visit to Savannah, December 21, 1888. That he very shortly thereafter reported the matter to Carter, and that the latter immediately faced him with Greene, appears from Carter's testimony. That according to Carter, Curtis in that interview confessed his story was false, is also stated by Carter. But Curtis is dead (Wyman Vol. 6), print. p. 385, and died prior to the Court Martial trial, so that his testimony of what took place is not here.

The Hughes report states (Wyman Def.'s Exhibit 116):

"The 6th and 7th counts were found in an affidavit made by Mr. W. R. Curtis. In the first he accuses Mr. John F. Gaynor of having made a corrupt proposition, and in the second the same accusation is made against B. D. Greene, contractor.

I have not been able to find any corroborative evidence. Both accusations are alleged to have been made at times

when no persons were present but the affiant and the accused. Messrs. Gaynor and Greene both declare under oath that they never made any such proposition to Mr. Curtis."

It appears from the report that Col. Hughes had also Carter's statement against Curtis. It is not to be wondered at that he should have found:

"In my opinion, and I say it with regret, for it is the unanimous opinion of all who have worked with Mr. Curtis, that he is a fine field engineer and possesses great practical sense; that he has used stimulants and indulged in other dissipations that have lowered his sensibilities and moral tone, and so deranged his nervous system, that his memory is no longer thoroughly reliable, and his credibility as a witness is capable of being successfully attacked if he is not supported by corroborative evidence."

Hughes Kept in the Dark.

But what would have been Col. Hughes' report if the relations then existing between Greene, Gaynor and Carter as since disclosed in the papers from Box B 31, had been placed before him?

What if he had known that after Curtis had been discharged by Carter, and just a few days before the publication of these newspaper charges, Carter had written to Greene the letter of May 26, 1889, to borrow $2,000, or as he now puts it, for Green to advance him $2,000 on a phosphate venture in which Greene and Gaynor and he were to be partners? What if he had known of the $1,600 loan from Greene to Carter from 1886 to January, 1888?

What if he had known of the contemplated joint enterprise in marble quarries, Air Jack, the Chili Scheme, the Construction of Cincinnati R. R. Terminals?

What if he had known that Carter had sent the telegram

and letters to Greene dictating to him just what he must swear to in order to meet the charges made by Curtis?

On June 6, 1889, Carter telegraphed from Savannah to B. D. Greene in New York, Carter's letter press book No. 3 pages 275-276, from Box B 31 (Shields Vol 1), p. 294:

> "General Alexander desires me to ask you to telegraph the 'Morning News' at once the following statement over your signature:
>
> The affidavit of Mr. Curtis so far as it alleges an attempt upon my part to bribe him and so far as it relates to statements said to have been made by me reflecting in any manner whatever upon Lieutenant Carter, is false in every particular. An affidavit to this effect will follow in due time."

The telegram is signed "O. M. Carter, C."

A second telegram from Carter to Greene, under the same date, and signed in the same way is as follows:

> "The affidavit of Curtis to which my telegram refers, is as follows:
>
> In February, B. D. Greene renewed the above proposition of Gaynor stating that he would add to my salary $500 per month and would get Lieut. Carter to increase said salary. He said it was in his power to secure my appointment and that he had also the power to have Lieut. Carter remove any obnoxious inspector, instaneing Inspector G. W. Brown, who was removed at Fernandina in 1886, and stating that Brown's successor was worth to him $60 per day." (Shields Vol. 1) p. 295.

And on the same date Carter writes to Greene (Letter press-book No. 3, p. 277 from Box B 31), over his own signature a letter relating to the same subject matter, and setting out an affidavit of denial on the part of Greene of the facts stated in Curtis' affidavit, which Carter had telegraphed to Greene (Shilds Vol. 1), p. 296:

> "June 6, 1889.
>
> "DEAR GREENE:
>
> It is absolutely necessary that you send affidavit as I requested. I had a long talk with Alexander and other of my friends & they all agreed that the first thing to

be done was for you & Gaynor to assert under the sanction of an oath (as Curtis has stated his story), that so far as it relates to you it is unqualifiedly false. Things have been worked up to such an extent that a letter asking for a suspension of judgment will hurt us both irremediably.

Alexander & Mackall suggest the following affidavit:

Before me, &c. personally appeared B. D. G. who, &c., deposes & says:

Certain sworn & other statements of a Mr. W. R. Curtis reflecting upon me have been brought to my attention & I desire to solemnly assert—

That I never approached Mr. W. R. Curtis with a bribe or other inducement to do wrong; that I did not state that I could have had power to secure his appointment as inspector; that I did not state that I had the power to have Lieut. Carter remove obnoxious inspectors, or that I had Mr. G. W. Brown sent to Fernandina in 1886 or that Mr. Brown's successor was worth to me $60 per day. The sworn statement of Mr. W. R. Curtis dated May 31, 1889, is, so far as it relates to me or to statements attributed to me that reflect in any manner whatever upon Lieut. Carter, false in every particular.

Sworn & Subscribed to, &c.

You may not think this necessary just now, but it is true & due me & I am here & know the situation & you must do it at once. You ought to come here. Do not fail to insert in the affidavit each & every statement that I have made. I asked John to telegraph you to come here. Everyone thinks the affidavit ought to be published at once, other things can follow later. John's affidavit, so far as it relates to him, will be ready.

I copy this sheet as I wish to remember form of affidavit Gen. A. prepared.

Truly,

O. M. C."

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Carter testified before the Examiner (Wyman Vol. 6), print. p. 385, as to the preparation of the affidavit, as follows:

"Gen. E. P. Alexander, a graduate of West Point and President of the Georgia Central Railway, a former intimate friend of mine, suggested that Greene publish an affidavit stating the facts, and of what had taken place

in my office. This was prepared by Gen. Alexander and Mr. Mackall, another friend of mine, and sent to Captain Greene for signature.

* * * * *

Mr. Erwin:

Q. Mr. Curtis died before the Court Martial?

The Witness: Yes, but Gen. Alexander and Mr. Mackall are not dead."

The following contracts for Savannah District were running during this period. See book of Contracts in evidence:

No. 3890. W. T. Gaynor, Savannah Harbor.

Advertised September 12, 1888, Bids opened December 24, 1888. Let January 16, 1889. Carter knew Greene was a partner in this contract. See Letter Carter to Greene January 22, 1890. Letter press book No. 4, p. 13. (Shields Vol. 1) p. 298. Carter admits this (Wyman Vol. 3) type. 990.

No. 3905. Anson M. Bangs, Cumberland Sound (Fernandina).

Advertised September 12, 1888. Bids opened December 24, 1888 Let January 31, 1889. This also was a Greene & Gaynor contract though taken in the name of Bangs (See post) p. 109.

No. 4037. Chas. C. Ely, Brunswick Harbor.

Advertised April 24, 1889. Bid opened May 13, 1889. Let May 31, 1889. This also was a Greene & Gaynor contract though let in the name of Ely (See post) p. 111.

The Government does not contend that the evidence as to the Curtis' charges shows that there was any conspiracy at that time, existing between Carter, Greene and Gaynor to divide the profits of the Government contracts in the district between them. It does claim, that it discloses that Carter had by that time placed himself under so many obligations to Greene and Gaynor and that his relationship to them in private transactions were such, that it made him a partisan of Greene and Gaynor's from the minute Curtis reported to him the atempt to bribe him. That the report to Carter resulted in Curtis' discharge, and that this was followed

shortly thereafter by Carter's writing to Greene for $2,000 for a private venture.

CARTER'S ALLEGED INTERVIEW WITH GEN. CASEY.

In his direct examination before the Examiner in 1905 (Wyman Vol. 2), print. p. 454, Carter testified:

"Q. Did you have any discussion with Chief Engineer Casey with regard to small schemes of that kind, in which contractors might be also interested?

A. I did.

Q. What was it, and when was it?

A. It was in the summer of 1889, and it grew out of an assault which had been made on me by a discharged employe named Curtis, and General Casey told me he had had a good deal of experience in work of that character, and that here were certain classes of people who could not conceive that any man could be on intimate terms with any one who was on the opposite of the contract; and he advised me that it would be better for me, if in the future I never even so much as considered having any interest in any manner, even though it were legal and proper, with anybody who was interested in any contract work under my charge.

Q. Did you follow that advice?

A. I did."

Again, before the Examiner in 1905 (Wyman Vol. 3), type. p. 954, Carter testified:

"I showed him (Casey) all the letters I had had, letters from Captain Greene or to him, and told him everything I had done, every single thing, as I had told Gen. Gillmore prior to his death, and General Casey—

Mr. Erwin: Q. General Casey is dead, too, isn't he?

A. He is dead, too, yes, sir.

General Casey told me to carefully preserve all of the correspondence that I had, so that it might always be shown that it had nothing whatever to do with anything which was improper; and at his suggestion I put away and kept to this day every single thing concerning this, which you have."

But Carter did not testify to a word of such alleged conversation with General Casey, when he was questioned before the Board of Officers or before the Court Martial. Why did he not say this when General Casey was living? Again, there is not a single reference in the Curtis' charges or Hughes' report, to any of this correspondence from Box B 31. Why should Carter have taken this correspondence and showed it to Casey in June, 1889?

And why, if it was shown to Casey in June, 1889, did it not play a part in Hughes' report made June 26, 1889?

Why should he have shown them to General Casey at all, if he did not know himself that they indicated improper relations?

Considering the alleged advice which Carter says Casey gave him, it is inconceivable that the Chief of Engineers, being apprised of the existence of such papers, and knowing that Carter was under official investigation at the time on the charge of fraud, would have failed to place those papers before the Inspector General at the time investigating the alleged corrupt relations between Carter and the contractors.

THE SEABOARD COMPANY, 1891.

Under cross-examination, Carter testified before the Examiner (Wyman Vol. 3), type. p. 994:

"Q. That Seaboard Company was organized to make some improvements over on Hutchinson Island, opposite Savannah, one side of the Savannah River Harbor frontange, on the side, wasn't it?

A. I do not now recall. I think it was organized to build a railroad from Covington to Savannah, and it was contemplated to have terminals on Hutchinson Island.

Q. It fell through, I believe?

A. No. I believe not; my impression is that Mr. Weed

—the company I think, went into the hands of a receiver, or some way, but I believe it was reorganized and a gentleman by the name of Thomas was managing it.

Q. The stock was worthless?

A. Well, they gave me some stock for my services for them, but I never got anything out of that stock."

Found in Carter's file case and now in Box B 31, is a letter, Complainant's Exhibit 603 (Wyman Vol. 3), type. p. 93, which reads as follows:

Vol 13 G5928

"The Seaboard Company
Savannah, Ga., Apr. 25, 1891.

Capt. O. M. Carter,
City.

DEAR SIR:

The second and third installments, of Mess. Greene, Gaynor & Co.'s subscription remains unpaid. Will you kindly take this matter up with these gentlemen. I have repeatedly written them relative to the matter.

Yours &c.,
ISAAC G. HAAS,
Sec. & Tr."

Vol 13 G5927

Carter testified as to this letter (Wyman Vol. 3), type. p. 94, as follows:

"Q. I will ask you, Captain, whether you, Captain Greene and John F. Gaynor were not interested in promoting that company?

A. I was interested, and I believe that the company sold some stock both to Mr. Greene and Col. Gaynor, but I have no personal knowledge of that except this letter of Mr. Haas, which seems to indicate that they did have some stock, and they wrote me to see them, knowing that they were contractors and I had access to them."

But the Seaboard Company had the office of its secretary, Mr. Isaac G. Haas, in Savannah. Greene and Gaynor were as well known in Savannah as was Carter, they having been contracting there for years. The John F. Gaynor contract No. 4224 for Savannah Harbor, of November 5, 1890, was then in operation.

That Haas might have sent a letter to Greene & Gaynor

in care of Carter, might be possible. But why should he write Carter to "take this matter up," unless Haas knew that Carter had a mutual interest with them in that venture?

ADIRONDACKS EXTENSION, ETC.

NEW YORK CENTRAL, CONSTRUCTION WORK, 1891.

Vol. 13 p. 5882

Carter testified before the Examiner (Wyman Vol. 3), type. p. 922, as follows:

> "Q. Captain Carter, along during the years 1890 and 1891, up to 1892, you were contemplating resigning your position from the Army, were you not? Had that in contemplation?
>
> A. No, sir, not after the fall of 1890. In the spring of 1890 I did. It may be that the matter was discussed also in 1891 in connection with another matter, that is, in connection with a system of railways, but nothing serious ever came up."

There is a letter, Complainant's Exhibit 59, from B. D. Greene, to Carter from Box B 31 (Shields Vol. 1), p. 259, which reads as follows:

Vol. 23 p. 10852

"New York, Jan. 22d, 1891.

DEAR CARTER:

Yours at hand—I have seen Mr. Richardson and he will see Mr. Depew soon and find out what he can. He says he knows they are going to build soon. He promises to let me know when time comes to make a proposal. Would it not be well for Mr. W to write a line to C. V. and ask him about it saying that he had a group of friends who wished to make a proposal when the time came. This would make it doubly sure I can't find any book on Bridges that is any good Saxton dont know of any—Let me know if any thing is done as I suggest above. When Mr. Bolles returns I will find out from him if he knows a good book.

Yours truly,

B. D. GREENE."

Vol. 7 P 3649

Carter testified before the Court Martial, Vol. 17, p. 3902, reference to the above letter as follows:

"A. Mr. Richardson is a man who died the other day in New York, and who was an old railroad contractor.

Q. Is that the Richardson with the five foot front house?

A. Yes. The New York Central Railroad expected to spend a large amount of money in Buffalo; I believe that the Lackawanna and the Erie and the New York Central were to either elevate or depress their tracks, I have forgotten which, and the City of Buffalo was to do a part, and the road was to do the rest; and Captain Greene had been anxious to do some of that, or to get interested in some of that work; and knowing that I had met some time before through my father-in-law, Mr. Webb, who had charge of all that work—I mean Walter Webb—he asked me—he had Mr. Richardson, who was a friend of Mr. Depew's see Mr. Depew, and he asked me if I would not have Mr. Webb write to Mr. Vanderbilt.

Q. And 'C. V.' is whom?

A. Cornelius Vandervilt. I don't remember whether I saw Mr. Webb or not. I don't think I did, because while I had met him, our relations were not such as I felt I could do anything; and nothing was done about this."

Q. Did you give any letter to him or to any one in that behalf?

A. Yes. I gave a letter to Captain Greene at one time; I think it is copied in the official letter book, stating what the firm that he was connected with had done down here; just in the shape of a letter of recommendation stating that his firm had completed its work successfully here."

See Letter referred to, Carter to Greene, January 22, 1890 (Shields Vol. 1), p. 298. It comes from Box B 31 not from official letter book. Vol. 23 P 10696

Before the Board of Officers, on September 24, 1897, Carter d stated (Board Record Vol. 1), p. 381:

"Q. Did you or Mr. Westcott have any communication with Mr. Rossiter of the New York Central Railroad, with the view to securing work for that (Empire Construction) company?

A. I don't know whether it was with the view to secure work for that company or to secure work for Captain Greene. We had some talk about work I know, but exactly what it was for, I don't believe that I could tell."

There is a letter dated March 27, 1891, Complainant's Exhibit 32, from Box B 31 (Shields Vol. 1), p. 299, from Carter to E. V. W. Rossiter, as follows:

"Washington, D. C., Mar. 27, 1891.

Mr. E. V. W. Rossiter,
Grand Central Depot, N. Y.

DEAR SIR:

When I presented your letter to Dr. Webb today he told me that he had virtually let the Contract for the Herkimer-Poland Extension to Mr. Westbrook, a partner of Gen. Husted, that the greater part of it had actually been let; that work had begun on last Monday & that he preferred to let the rest of the contract to the same party to whom he had already let the greater part. I regret exceedingly that I had no opportunity to submit a proposition for that work—either as a whole or in part as I feel confident that it would have inured to the Company's benefit as well as to my own.

Very sincerely yours,
O. M. CARTER."

There is a letter dated April 6, 1891, Complainant's Exhibit 33, from Box B 31 (Shields Vol. 1), p. 300, from Carter to Dr. W. S. Webb, as follows:

"Savannah, Ga., Apr. 6, 1891.

Dr. W. S. Webb,
Pres. Wagner Palace Car Co.,
Opposite Grand Central Depot,
New York City.

DEAR SIR:

Carter's Explanation Before the Examiner, 1905.

Carter testified on his direct, before the Examiner (Wyman Vol. 2), p. 455:

"Q. Was there any talk with regard to any railroad being built through the Adirondacks that you ever had anything to do with, if you recollect? If so, what was it?

A. As I remember that, Dr. Webb contemplated the building of a railroad from somewhere near Utica to some place on the St. Lawrence, as I recall it, and I saw him in connection with Mr. Westcott's proposed construction company, concerning which he conferred with Mr. Vanderbilt and Mr. Depew; it was contemplated to secure that work, if possible, but nothing came of it.

Q. Did you have anything to do with that?

A. Nothing whatever, Dr. Webb informed me that the contract had already been let.

Q. Did Greene & Gaynor have anything to do with it?

A. No, sir; I think not. I believe that some time afterwards a Mr. Hegeman got a small sub-contract for a little bit of grading, and got Captain Greene to finance it, but I know nothing about it of my own knowledge."

Hegeman stated before the Board of Officers, in reply to questions by Captain Carter (Board Record Vol. 2), p. 655:

"Q. Have we ever had any business relations?

A. You and I?

Q. Yes.

A. None whatever, none at all, so far as I remember. I remember asking you to see a manager of a railroad corporation once in behalf of a matter in Ohio, and further than that—that in fact is as far as it ever went. That is the only relations that have ever been between us.

Q. Have I ever had any interest in anything that you ever have been interested in?

A. Not a thing in the world."

Again, Hegeman stated before the Board of Officers, October 13, 1897 (Board Record Vol. 2), pp. 655 and 656:

"Gen. Gillespie: Q. You spoke about that Adirondack Railway. Did you ever build any of that road?

A. Yes, sir; we ballasted some of the road.

Q. You say "we," what company was that?

A. Captain Greene and myself, originally; afterwards a third man came in.

Captain Carter:

Q. Would you mind saying who the third man was?

A. No; certainly not. It was John F. Gaynor.

* * * * *

Gen. Gillespie:

Q. What year was that in?

A. In the spring of 1892. I secured a contract.

Q. Do you know whether Captain Carter at your request wrote any communication which brought you in contact with the President of this road?

A. No; I am quite sure he did not.

Q. Did he write you any letters of introduction to the President of the road or any of the Directors?

A. No, not at that time. Later on I think I had a personal leter to a Mr. Rossiter, which I never used.

Q. What was that for?

A. That was for the old Ohio matter which came up again.

Originally, I failed to get the bonds endorsed and after a lapse of two years, perhaps more, I undertook to have a traffic contract made in such a way as to strengthen the securities as much as possible. It was in relation to leading up to a possible contract that I asked for a letter to Mr. Rossiter.

Q. Will you explain who he is?

A. He is one of the financial officers of the New York Central Road. The point I wished to gain was a traffic arrangement between what was known as the Big Four Road and this little road in Ohio, but I succeeded in gaining what I wanted without having to use Mr. Rossiter's letter, or rather Captain Carter's letter to Mr. Rossiter.

Q. Don't you consider that a business relation?

A. No, sir. I should hardly consider it more than a personal matter.

Q. Was Captain Carter associated with you in any way in the matter of which he wrote?

A. Not at all, sir; so far as money was concerned.

Captain Carter:

Q. Did I write to you or speak to you at any time in behalf of another gentleman who was closely connected

with some of the Vanderbilt enterprises, suggesting that it might be possible that we could form a business association or do you remember?

A. Yes, there was some talk, but it never came to anything.

Q. Do you know who I mean?

A. Yes; I know what you mean without stating who that gentleman was. I would like to say this—

Q. You spoke to me as to having seen General Husted. Is that the gentleman referred to?

A. Yes.

Gen. Gillespie:

Q. Who is he?

A. I think he was an attorney, or directly connected with the Hudson River Road in some way or other. It was in relation to possible work if it came up.

Captain Carter:

Q. Did anything ever come out of it?

A. Not a thing.

Gen. Gillespie:

Q. Was it a work in which Captain Carter was expected to be associated with you?

A. Possibly.

Captain Carter:

Q. Was it contemplated that there should be anyone else besides ourselves in that enterprise in case I became associated with the work?

A. Well, now, I don't recollect as to that, it is so long ago.

Gen. Gillespie:

Q. Was Captain Greene expected to be associated in it?

A. No. No reference was ever made to Captain Greene with reference to this at all."

There is a telegram in Box B 31, dated New York, October 9, 1891, from W. W. Hegeman, to O. M. Carter, which is copied in (Court Martial Record Vol. 18), p. 4187, as follows:

"*To Captain O. M. Carter,*
Savannah.

Wire what hour you will be at St. James Hotel. Will wait for you. Important. Captain wants Fernandina check.

W. W. HEGEMAN."

Carter testified on same page, of same record, "Captain" in the telegram referred to B. D. Greene. Carter admits (Court Martial Record Vol. 18), p. 4083, that:

W. W. Hegeman's office was at 50 Broadway, New York City, and that:

B. D. Greene's office was at 50 Broadway, New York City.

Hegeman stated before the Board of Officers (Board Record Vol. 2), p. 653, that he occupied a desk in one of Greene's offices in New York.

Hegeman testified before the Court Martial (Ct. Martial Record Vol. 14), p. 3210, as to his telegram to Carter, October 9, 1891:

"That relates to the Ohio railroad business."

Now the letter of Carter to Rossiter of February 8, 1892 from Box B 31, Complainant's Exhibit 462 (Wyman Vol. 1), Type. p. 191, contradicts Hegeman outright. It shows that it was not written to aid Hegeman to obtain a traffic contract for an Ohio road, but to obtain construction work on the New York Central. The letter reads:

"New York, Feb. 8, 1892.

My Dear Mr. Rossiter,

This will introduce to you Mr. W. W. Hegeman, whom I have associated with me and of whom I spoke to you to-day. It is possible that some work of construction may come up on some of the roads under Dr. Webb's control, in which case remembering the letter you gave me to Dr. Webb nearly a year ago—I beg that you will kindly give Mr. Hegeman a letter to Dr. Webb which will explain who he is and secure for him an audience.

Thanking you in advance for the courtesy, I am,

Very sincerely yours,

O. M. Carter."

Mr. Hegeman, as a witness for the defense, testified before the Court Martial (Ct. Martial Record Vol. 14), p. 3211, as follows:

"Q. Did you ever contemplate going into business in any matters with Captain Carter?

A. Yes; there was some talk about that.

Q. Please state what it was, outside of the Ohio matter?

A. It was in relation to the possibility of getting the repairs, or contracts for new work on the New York Central Railroad, and that was merely a tentative proposition, and it never came to anything. There was an effort, however, made to make such an arrangement.

Q. Who was trying to bring about that arrangement?

A. Captain Carter.

Q. And through whom, do you know?

A. Through his friends in the New York Central management.

Q. And he knew you were an engineer?

A. Yes.

Q. Captain Carter knew you were an engineer and a contractor?

A. Yes.

Q. Did Captain Carter's father-in-law, Mr. Westcott, have anything to do with it?

A. Nothing further than to use his influence with his friends there at the 42nd Street Depot."

There are in evidence two letters from W. W. Hegeman to Captain Carter, dated respectively, January 20, 1892, and January 22, 1892, from Box B 31, and copies in the Court Martial Record Vol. 8, pp. 1794, 1795, which show conclusively that Hegeman's statement to the Board of Officers, that Carter's relation to Hegeman in regard to the Ohio matter was merely a friendly act, was not true, but that they were in fact making an earnest effort to get a joint interest in the Ohio project, which fell through. These letters are written on Empire Construction Company letter heads, from No. 50 Broadway, New York, the office of that company, and of both Greene and Hegeman.

Carter's Explanation as to the Hegeman Letter of February 8, 1892.

Before the Court Martial (Ct. Martial Record Vol. 18, p. 4081, Carter testified:

"Q. You wrote a letter in which you referred to Mr. Hegeman as your business associate. What did you mean by it?

A. He did not become a business associate when this arrangement that my father-in-law was trying to make with a gentleman who is now dead, and who was closely connected with the Vanderbilt interests came up. I wanted somebody who had had large experience in railway work; and I was told at the American Society of Civil Engineers that there was no better man in the United States than Mr. Hegeman; and it was with that object in view; it was a prospective business associate; but Mr. Depew did not consent to what we wanted, and that fell through."

Now, Carter's statement before the Examiner in 1905 (*ante,* p. 87) about "Mr. Westcott's proposed construction company," is not consistent with the other testimony in the case. In the first place, his claim is that the tentative agreement to form this construction company was with Hegeman, and the latter testified before the Court Martial (*ante,* pp. 90, 91) that Carter was the party trying to bring about the arrangement and that Westcott had nothing to do with it except to use his influence with his friends at the 42nd street depot.

In the second place, Westcott testified to the same thing. (Shields Vol. 2), p. 1101. While his testimony may not be admissible to prove the ultimate fact, it is admissible as we will point out (*ante,* p. 17) to charge notice on the defendants, I. S. Carter and Lorenzo D. Carter, who are claiming certain interests in the fund as *bona fide* purchasers without notice,—a claim the Government insists is merely a scheme to save a part of the fund for O. M. Carter and to that extent it is admissible against O. M. Carter.

In the third place, Carter had stated before the Board of

Officers on September 24, 1897 (*ante*, p. 85) that his correspondence with the New York Central people was to get contracts for Greene. It was not until the correspondence was brought out on him, that on October 13, 1897, he brought out in his questions to Hegeman (*ante*, p. 88), that he contemplated a partnership with Hegeman, and even then he did not claim anything about any proposed construction company of Mr. Westcott's.

In the fourth place, Carter himself had testified that Mr. Westcott was an old man and had retired some 10 or 15 years before from business. (Ct. Mar. Vol. 19) p. 4411.

ORANGE, NEW JERSEY, SEWERAGE CONTRACT.

EMPIRE CONSTRUCTION COMPANY. 1891.

On March 30, 1891, Carter writes to C. P. Bassett, Newark, N. J., a letter, from Box B 31, Complainant's Exhibit 34 (Shields Vol. 1), p. 301, as follows:

"Savannah, Ga., Mar. 30, 1891.

Mr. C. P. Bassett, M. Am. Soc. C. E.
Newark, N. J.

DEAR SIR:

Will you please inform me as to the character and amount of work proposed for Orange in regard to water supply, sewerage and drainage? I should be glad to know also when proposals for the work are to be opened—if the work is to be done by contract. Any other information concerning this work I shall much appreciate.

Very truly,
O. M. CARTER."

Bassett's reply, April 2, 1891, inclosing his report to Newark City Council, is set out in record. Exhibit 488 (Wyman Vol. 1) type. p. 232, and comes from Box B 31.

Now, James E. Chandler, a lawyer of New York, a witness for the defense, testified (Ct. Martial Vol. 10) p. 2148, that he was Secretary of the Empire Construction Company. That

it was organized June 10, 1891; the certificate of incorporation having been filed on that day.

That the subscribers to the capital stock were:

B. D. Greene	$49,500.
A. M. Newton	125
James E. Chandler	125
John M. Waddle	125
John A. Roebuck	125

That he and Greene had adjoining offices at 50 Broadway, New York.

"Q. Who were the real owners of the stock of the Empire Construction Company? Who were the real parties in interest in the Empire Construction Company after its organization was completed, if you know?

A. B. D. Greene, A. M. Newton, and John F. Gaynor.

Q. And what proportion did these three men have in that company?

A. An equal third.

Q. Do you know for what specific purpose, if any, that company was organized?

A. Yes, sir.

Q. For what purpose?

A. Organized for the purpose of building sewers in the City of Orange, New Jersey.

Q. Did it ever do any other work than that, if you know?

A. No, sir.

Q. Has that corporation ever been dissolved?

A. No.

Q. How long was it engaged in the work in Orange, New Jersey?

A. I think up to January, 1894, possibly later, some time having elapsed between the finishing of the work and the final settlement with the city."

W. W. Hegeman, as a witness for the defense, testified before the Court Martial (Ct. Martial Record Vol. 14), p. 3210:

"Q. Did you ever have any interest in the Empire Construction Company?

A. No further than I was told one day that five shares

of stock had been put in my name for the purpose of a meeting or some formal matter. The stock was not delivered to me. That is the only interest I ever had in the Empire Construction Company."

He further testified, p. 3209, that he had in 1893, or 1894, sold a part of the plant of the Empire Construction Company and that he was in making the sale "Acting for Greene & Gaynor or really the Empire Construction Company."

There was found by General Gillespie in Carter's file case, and now in Box B 31, a stock certificate book, Exhibit 35 (Shields), the certificates of stock issued, and later transfers of the "Empire Construction Company." It shows 2,000 shares issued of which there was:

Issued June 10, 1891, to					B. D. Greene	1980	shares,	cancelled	across	face.	
"	"	"	"	"	A. M. Newton	5	"	"	by	pasting	back.
"	"	"	"	"	Jas. E. Chandler	5	"	"	"	"	"
"	"	"	"	"	J. M. Waddle	5	"	"	"	"	"
"	"	"	"	"	J. A. Roebuck	5	"	"	"	"	"
						2000	shares.				
Issued June 30, 1891, to					J. F. Gaynor	5	shares,	cancelled	by	pasting	back.
"	Dec. 18	"	"		E. H. Gaynor	5	"	"	"	"	"
The following certificates not detached:											
Issued Sept. 10, 1891, to					Neil McLaughlin	100	shares,	cancelled	across	face.	
"	"	"	"	"	Thos. Reilly	100	"	"	"	"	
"	"	"	"	"	W. W. Hegeman	100	"	"	"	"	
"	"	"	"	"	John F. Gaynor	800	"	"	"	"	

Then follows the last certificate not detached, signed by B. D. Greene, president, for 1980 shares, name and date in blank.

There is in evidence, from Box B 31, a letter dated January 22, 1892, from W. W. Hegeman, to O. M. Carter (Copied in Court Martial Record Vol. 8), p. 1795, which reads as follows:

"The Empire Construction Company,
50 Broadway, New York, Jan. 22, 1892.

DEAR CAPTAIN:

I am just in receipt of a letter from Mr. Buell, who says, in relation to the loan he has arranged:

'Our loan is a straight loan of $1,000,000. for twelve months, on our notes with the bonds as collateral: No

entanglements with any road; perfectly independent as a line &c.'

He is to receive first payment oin account Feby. 4th. It seems as if we might still be able to control the project by making some definite financial arrangement prior to that date. I do not know what condition Buell has agreed to covering commissions &c. to the parties who are to discount the notes.

I will get all the information possible so that in case you should come to New York within the next few days, and there is still a chance to get the road, another effort can be made.

Very truly yours,

W. W. HEGEMAN.

Capt. O. M. Carter,
Savannah, Ga."

A similar leter from Hegeman to Carter, on the same subject dated January 20, 1892, headed "Empire Construction Company, 50 Broadway, New York," from Box B 31, is copied in Court Martial Vol. 8, p. 1794.

Now, Carter admits (Wyman Vol. 3), type. p. 931, that he stated before the Board of Officers:

> "I contemplated at one time having some business relations with Mr. Hegeman: I also contemplated having some business relations with A. M. Newton, but no money that I remember has ever passed," etc.

This is the same A. M. Newton who it is alleged had the one-third interest with Greene and Gaynor in the Empire Construction Company, but who the certificate shows had only 5 shares in his name.

What was this stock certificate book doing among Carter's private papers? Why did Carter write to Bassett on March 30, 1891, for information and for a copy of the proposals for this sewerage contract?

Carter's Explanation of the Letter of March 30, 1891.

Under cross-examination before the Examiner (Wyman Vol. 3), type. p. 941, Carter testified:

> "This letter was written on March 30, 1891, while Mr. Westcott was in Washington. He had sent me over to New York to see Mr. Rossiter about some other matters, and to see Mr. Bassett, because he wanted to know when the water works, and other matters were to be done in Orange, on account of his large property interests there. I did not see Mr. Bassett, did not have time, so when I went back down to Savannah, I remembered that I had not attended to that, and then wrote to Mr. Bassett for my own information, and asked if there would be proposals. I wanted to get them as every engineer does, the specifications, to file them away. It was not till many months afterwards that the Empire Construction Company was organized."

But Chandler testified that the certificate of incorporation of the Empire Construction Company was filed on June 10, 1891, and that it was organized for the express purpose of executing that Orange, New Jersey, sewerage contract. The certificates of stock in evidence bear date June 10, 1891.

Moreover, Carter's letter to Bassett makes no inquiries as to whether the water supply or sewerage was to go by Westcott's property, or any inquiry such as a property owner might make. His inquiries as to water supply, sewerage and drainage, are such only as a contractor would make. He asks to be informed of

> "The character of the work proposed."
> "The amount of the work proposed."
> "When proposals are to be opened."
> "Any other information concerning the work."

If he merely wanted the specifications as a sample to keep, why should he ask for the time when proposals were to be opened?

Carter Introduced Greene to Westcott 1892.

Carter testified before the Examiner (Wyman Vol. 3), type. p. 942:

"A. I stated that my recollection is that after they had been working on that Orange contract some time, they got in trouble and felt that the members of the city council were not treating them fairly, and they wanted to meet some influential residents of Orange to see if they could not get fair treatment; and it is my recollection that at Captain Greene's request, I introduced him to Mr. Westcott. I think it was at the University Club, in New York; I do not know when that was, but my recollection is it was along in 1892.

We think circumstantial evidence as to this transaction taken in connection with the partnership relation shown in other transactions between Carter, Greene and Gaynor, is sufficient to show that Carter was financially interested with Greene and Gaynor in the Orange, New Jersey, contract. While it may not be referred to, to prove the substantive fact, the testimony of Mr. Robert F. Westcott before Commissioner Shields, we think is admissible to affect the defendants I. S. Carter and L. D. Carter, who are claiming an interest in certain assets as "*bona fide* purchasers for value without notice," and to that extent it is admissible against O. M. Carter, who we insist is trying to cover up a certain amount of the assets under their claim.

Westcott testified (Shields Vol. 2), p. 1403:

"Q. You testified in the cross-examination about certain contracts which the Empire Construction Company had for sewerage at Orange, New Jersey. Did Captain Carter say anything in his conversation with you relative to who was interested in that Empire Construction Company and New Jersey contract?

A. Yes, sir.

Q. Who did he say was interested in it?

A. Gaynor and Greene.

Q. Anything in regard to himself?

A. Yes, he was interested.

Q. Do you recollect any particular conversation with Captain Carter relative to that, in regard to the way the work was going on?

A. Yes; he objected to the way it was done a great deal and was very much annoyed.

Q. What did he say?

A. Why Greene didn't pay the proper attention to it; he didn't think Greene gave it the proper attention; he neglected it; it was badly done, was not managed properly and he was afraid they would lose a lot of money on it."

Carter was asked on cross-examination if he had made such statement to Mr. Westcott, but under advice of his counsel he did not answer it. (Wyman Vol. 3) pp. 943, 944.

Carter's Explanation as to the Certificate Book.

On September 23, 1897, Carter stated before the Board of Officers (Board Record Vol. 1), p. 260:

"Q. Do you know anything about the organization of The Empire Construction Company?

A. Yes, sir.

Q. Who is president of that company?

A. I think Captain Greene is.

Q. Have you any interest in any way in that company

A. No, sir. I talked it over with them, but had no interest in the matter.

Q. Have you any records of the company in your possession?

A. I think that I have.

Q. How did that come about?

A. The stock book of the company was left here by Captain Greene or Mr. Gaynor.

Q. Why did they leave it here?

A. I don't know why it was left. I believe, I think that it has been there a long, long time, several years."

Carter admits before the Examiner, in 1905, making this statement, but says he learned afterwards that the book was left there by Wm. T. Gaynor (Wyman Vol. 3), type. p. 932.

In a typewritten affidavit filed by Carter with the Board of Officers, made October 20, 1897, W. T. Gaynor states:

> "I was the Treasurer of the (Empire Construction) Company and had possession of all the books. While I have no definite recollection on the subject, I must have left the stock book at Capt. Carter's office inadvertently."

Board Record—How Far Admissible.

In regard to the effect of this affidavit as evidence, reference is made to the Agreement of Counsel in this cause (Wyman Vol. 9), type. pp. 4495-4496, as follows:

> "The report which is verified by the initials of George L. Gillespie, made by the initials of Colonel Geo. L. Gillespie, made by the Board of Inquiry of which Colonel Geo. L. Gillespie was president, of the statements (not made under oath) and not hearsay of witnesses before said Board of Inquiry made in 1897 by said Board into Captain Oberlin M. Carter's administration at Savannah, may be referred to by either party or by the Court for what such statements not made under oath may be worth. It appearing from the report of the Board of Inquiry that here were certain affidavits tendered to the Board of Inquiry by Oberlin M. Carter, which are not copied into the stenographer's report of the testimony of witnesses (not under oath) before the Board, and the present Counsel of the parties not knowing what those affidavits are or where they are, it is agreed that if they can be produced and identified that they shall be considered as part of the Board of Inquiry record on the same footing as the unsworn statements of witnesses before the Board as provided in Clause (1), with the further statement that the Board of Inquiry report states, that they were typewritten affidavits closely identical in phraseology and from persons who were accessible, and should have appeared before the Board for cross-examination."

The batch of affidavits which included the Wm. T. Gaynor affidavit above referred to, were subsequently obtained from

the War Department, produced at the request of defense for use as above.

Carter further stated before the Board September 23, 1897 (Board Record Vol. 1), p. 262:

"As I understand it, The Empire Construction Company, as an organization, is non-existent. I don't know anything about the details of the business. I only know that they talked of organizing it for the purpose of building the Adirondack railroad.

Q. Were you in any way interested in that work, or in that company?

A. Not personally, I mean that I had no pecuniary interest, my interest in it was only on account of my friendship for Captain Greene and my acquaintance with the members of the firm.

Q. Did you take any steps to further the interests of the construction company?

A. I don't remember whether I did or not. I remember seeing Mr. Vanderbilt once and speaking to him, but whether it was in the interest of the company or not I don't know, I don't remember.

Q. Has Mr. R. F. Westcott any interest in the affairs of The Empire Construction Company?

A. No pecuniary interest that I know anything of.

Q. Did he take any measures to further the interests of this company?

A. None that I know of, except this, knowing them, and he being an influential resident of Orange, New Jersey, they asked me to introduce them to him, as they wanted to meet some people in Orange; whether they met them through him or not, I don't know."

Carter admits making this statement but says (Wyman Vol. 3), type. p. 934:

"I was in error in my reply when I said they talked of organizing it for the purpose of building the Adirondack Railroad, because Mr. Hegeman testifies that the Adirondack road was not built under the auspices of that company at all, and that the company was organized purely for the purpose of building a sewer in New Jersey, and I suppose in hearing it talked I had gotten it mixed; so I think that correction ought to be made."

But the question is not whether the contract for ballasting a part of the Adirondack road which was subsequently obtained by Hegeman, Greene & Gaynor (*ante,* page 87) was obtained in the name of the Empire Construction Company, but whether when Carter wrote the letter of February 8, 1892 (*ante,* p. 90), introducing Mr. Hegeman "whom I have associated with me," they were trying to get construction work for the Empire Construction Company or for the associates, Hegeman, Greene, Gaynor and Carter?

On September 24, 1897, before the Board, Carter was questioned about the certificate of stock in Hegeman's name, in the certificate book found in his file case, and stated (Board Record Vol. 1), p. 378:

"Q. This is the same Hegeman that I was asking about yesterday?

A. I saw Mr. Hegeman a few times."

Before the Court Martial, April 12, 1898, Carter testified (Ct. Martial Record Vol. 18), p. 4083:

"A. I never saw any stock certificate of the Empire Construction Company until that book was produced here in September. Never saw the book that I remember."

Yet when first questioned about it before the Board, he stated (*ante,* p. 99) he believed it had been among his effects for several years.

But the next day, April 13, 1898 (Ct. Martial Record Vol. 18), p. 4134, Carter testified:

"Q. You never saw it until your official acts were investigated?

A. Not that I remember. I may have seen the book, but I never saw its interior.

Q. You may have seen its exterior?

A. I may have seen it, because it evidently must have been lying in the office."

FACTS ADMITTED BY CARTER.

That as early as January 22, 1891, Greene was writing him relative to getting contracts on New York Central construction work (*ante*, p. 84).

That as early as March 27, 1891, Carter was writing to Rossiter of the New York Central, regretting that the contract for the Herkimer-Poland Extension had been let before he had had an opportunity to bid for it (*ante*, p. 86).

That on April 6, 1891, he writes to Dr. Webb of the New York Central, that he and his associates would be glad to have an opportunity of bidding on construction of Adirondack R. R. Extension (*ante*, p. 86).

That Carter writes to Bassett on March 30, 1891, for information as to character and amount of work proposed for drainage and sewerage proposed to be done at Orange, New Jersey, and asking when proposals for the work were to be opened (*ante*, p. 93).

That the Empire Construction Company, chartered June 10, 1891, got the sewerage contract and did the work (*ante*, p. 94).

That W. W. Hegeman, an engineer and contractor occupying a desk in Greene's office, 50 Broadway, New York, as early as October 9, 1891, was interested with Carter in trying to obtain a contract for railroad construction in Ohio (*ante*, pp. 89, 90, 95, 96).

That Carter admits that he "contemplated" a business association with Hegeman, who he claims was recommended to him at the Society of Civil Engineers (*ante*, pp. 96, 92).

That Hegeman wrote to Carter on letter heads of Empire Construction Company, January 20 and 22, 1892, about the Ohio project, "It seems as if we might still be able to control the project by making some definite arrangement" and "in

case you should come to New York within the next ten days, and there is still a chance to get the road, another effort can be made" (*ante*, pp. 95, 96).

That on February 8, 1892, Carter wrote to Rossiter, "This will introduce to you Mr. W. W. Hegeman, whom I have associated with me, and of whom I spoke to you today. It is possible that some work of construction may come up on some of the roads under Dr. Webb's control, etc." (*ante*, p. 90).

That the stock certificate book of the Empire Construction Company was found in Carter's possession.

That at the very time 1891-1892, when Carter claimed before the Board he was trying to help Greene get construction contracts on the New York Central road, he now admits that he and Hegeman were trying to get these and other contracts for themselves.

That shortly after this correspondence of Carter's it appears that Hegeman, Greene & Gaynor did get a ballasting contract on the Adirondacks, but in which they claim Carter was not interested (*ante*, pp. 87-88).

The admitted facts show a relationship between the parties as significant as the facts denied, so far as it effects the mental ripeness of Carter for the conspiracy charged.

MUTUAL RELATIONS OF THE PARTIES TO THE CONTRACT LET IN THE SAVANNAH DISTRICT FROM 1884 to 1897.

The Government offered in evidence the entire series of contracts and proposals for jetty-work, let in the Savannah District from the beginning of Carter's service there in 1884, under General Gillmore, to Gillmore's death in 1888, and from 1888 to the end of Carter's service in the Savannah District in 1897, being 29 contracts in all. A list of these contracts is in evidence as Exhibit 68 (Shields Vol. 1), 352, 351, 418, 419. See, also, printed volume of contracts in evidence.

Every one of these contracts were in the name of John F. Gaynor, or Edward H. Gaynor, or W. T. Gaynor, or in the name of some person or corporation for the beneficial interest of the defendants, with the exception of the following:

No. 2824, Lara & Ross, contract made with Gillmore, Sep. 27th, 1884, for Cumberland Sound. Let by General Gillmore.

No. 5359, A. J. Twiggs, contract made with Carter, July 5, 1893, Savannah River near Augusta.

While some of the contracts were nominally let to W. H. Walsh, Anson M. Bangs and Chas. C. Ely, the evidence shows that in every case, with the exception of Nos. 2824 and 5359, the defendants did the work and received the money paid by the Government on the contracts.

The following references to the evidence will show this is true. Only a sufficient number of the disbursing checks in evidence, paid on the respective contracts being selected to show that the defendants received money under each contract, the other checks being cumulative.

Relation of Greene and the Gaynors to the Various Contracts Let in Savannah District.

SAVANNAH RIVER AND HARBOR.

File No.	*Contract date.*	*(Shields) Exhibit number.*
2744	Sep. 1, 1884, John F. Gaynor, Contractor,	Ex. 68
	Eli T. Bangs and Edward Gaynor, Guarantors and Bondsmen.	Ex. 108
3282	Oct. 28, 1886, John F. Gaynor, Contractor,	Ex. 68
	Edward Gaynor and Myron Bangs Guarantors and Bondsmen.	Ex. 108
3890	Jan. 16, 1889, Wm. T. Gaynor, Contractor,	Ex. 68
	Eli T. Bangs and Edward Gaynor, Bondsmen.	Ex. 108
	B. D. Greene and Jacob Paulsen, Guarantors.	Ex. 108
	The original checks issued to W. T. Gaynor by Carter in payment of work under this contract bear the personal endorsement of B. D. Greene, as shown by Exhibits 216, 285. Vol 31	
	Greene was a partner, see letter Carter to Greene Jan. 22, 1890. Bk 4 p. 13. (Shields Vol. 1 p. 298.)	Ex. 31
	John F. Gaynor and B. D. Greene did the work. Testimony Cooper (Shields Vol. 1), pp. 506-7. Vol 23 p 10904-5	
4224	Nov. 5, 1890, John F. Gaynor, Contractor,	Ex. 68
	B. D. Greene and Jacob Paulsen, Guarantors and Bondsmen.	Ex. 108
	Check Aug. 4, 1891, No. 167,666, $37,-289.30, endorsed by B. D. Greene.	Ex. 285
	Check Sep. 4, 1891, No. 167,669, $35,-122.92, endorsed by B. D. Greene.	Ex. 285
	These checks were issued on this contract, see	Ex. 216
4960	Oct. 22, 1892, Atlantic Contracting Co., Contractor.	Ex. 68
	Anson M. Bangs and W. T. Gaynor, Guarantors.	
	W. T. Gaynor, Anson M. Bangs, and B. D. Greene, Bondsmen.	Ex. 108

File No.	*Contract date.*	*(Shields) Exhibit number.*
	The Atlantic Contracting Co., incorporated in West Virginia, July 22, 1892, incorporators:	
	John F. Gaynor 2993 shares $14965	
	Benj. D. Greene 2992 " 14960	
	W. T. Gaynor 5 " 25	
	Robt. H. Greene 5 " 25	
	James E. Chandler 5 " 25	
	Vol. 23 G 1028-31 See Charter.	Ex. 224
	Certain checks showing connection of each of above with money paid on this contract.	
	Check. O. M. Carter on Asst. Treas. N. Y., No. 200308, dated Dec. 31, 1892, favor Atlantic Cont. Co., $20,000. Credited to account J. F. Gaynor in Am. Ex. Nat. Bk. N. Y., Jan. 3, 1893,	Ex. 243 Vol.
	Issued for Voucher 28, Dec. '92, contract 4960.	Ex. 167 Vol.
	Check, O. M. Carter on Asst. Treas. N. Y., No. 224417, dated May 31, 1893, favor Atlantic Cont. Co., $6,105.69, credited to acct. B. D. Greene, Amer. Ex. Nat. Bk., June 5, 1893.	Ex. 240 Vol. 3
	Issued for Voucher 28, May, 1893, contract 4960 of Oct. 22, 1892, see.	Ex. 168 Vol. 3
	Check O. M. Carter on Asst. Treas. N. Y., No. 224433, dated July 3, 1893, favor Atlantic C. Co., $46,592.39, credited to acct. W. T. Gaynor in Amer. Ex. Nat. Bk. N. Y., July 11, 1893.	Ex. 246 Vol. 3
	Issued for Voucher 5, July, 1893, contract 4960 of Oct. 22, 1892.	Ex. 168 Vol. 3
	Check, O. M. Carter on Asst. Treas. N. Y., No. 224602, dated Dec. 1, 1893, favor Atlantic Contracting Co., E. H. Gaynor, Treas., for $40,000, endorsed E. H. Gaynor, Treas.	Ex. 249 Vol. 3
6515	Oct. 8, 1896, Savannah Harbor, Atlantic Contracting Co., Contractor.	Ex. 68 Vol. 3
6517	Oct. 8, 1896, Cumberland Sound, Atlantic Contracting Co., Contractor.	Ex. 68 Vol. 3

File No.	*Contract date.*	*(Shields) Exhibit number.*
	Eli T. Bangs and Eugene Hughes, Guarantors, Anson M. Bangs and Eugene Hughes, Bondsmen.	Ex. 108
	Incorporators and principal stockholders as above: B. D. Greene, John F. Gaynor, Wm. T. Gaynor, see Charter.	Ex. 224
	Certain checks showing connection of each of defendants with money paid on contract.	
	Checks, O. M. Carter on Asst. Treas. N. Y.	
	No. 270536, dated July 6, 1897, favor Atlantic Co.	$230,749.90
	No. 270537, dated July 6, 1897, favor Atlantic Co.	345,000.00
		$575,749.90
	Credited in Acct. B. D. Greene in Knickerbocker Trust Co. N. Y., July 6, 1897,	Ex. 236
	Check, B. D. Greene, dated July 6, 1897, on Knickerbocker Trust Co., favor Wm. T. Gaynor, for $30,000, paid July 13, 1897	Ex. 235
	Check, B. D. Greene, dated July 6, 1897, on Knickerbocker T. Co., favor John F. Gaynor, for $100,000, paid July 13, 1897	Ex. 235
	Check, B. D. Greene, Aug. 2, 1897, on Knickerbocker Trust Co. N. Y., $10,000, credited in acct. E. H. Gaynor, Treas., in So. Bk. State of Ga., Savh., Aug. 3, '97.	Ex. 212

Edward H. Gaynor was manager of the work at Savannah under the 1896 contract, as was Wm. T. Gaynor, a part of the time until he went to Fernandina and took charge there of the Cumberland Sound work.

Testimony of Cooper (Shields Vol. 1), pp. 509-10.

Testimony of J. L. Gallaher (Shields Vol. 1), pp. 599-600.

Cumberland Sound.

File No.	*Contract date.*	*(Shields) Exhibit number.*
2824	Sept. 27, 1884. Lara & Ross, contractors.	
3285	Oct. 29, 1886. Anson M. Bangs, contractor.	Ex. 68
	Eli T. Bangs and Horace Wheeler, Guarantors.	
	Eli T. Bangs and Edward Gaynor, Bondsmen.	Ex. 108
	E. H. Gaynor was manager, Testimony of Cooper (Shields Vol. 1), p. 507.	
3905	Jan. 31, 1889. Anson M. Bangs, contractor.	
	Eli T. Bangs and Ed. Gaynor, Guarantors.	108
	Eli T. Bangs and B. D. Greene, Bondsmen.	108
	Check O. M. Carter on Asst. Treas. N. Y. May 3, 1889.	
	No. 139,108, $11,306.67, endorsed B. D. Greene.	Ex. 285
	Issued for voucher 29, May, 1889, Contract 3905.	Ex. 216
	Check Aug. 9, 1889, No. 139,172, $12,337.58, endorsed B. D. Greene.	Ex. 285
	Issued for voucher No. 16, Aug. 1889, contract 3905.	Ex. 216
4572	May 4, 1891, John F. Gaynor, contractor.	68
	B. D. Greene and Henry Berg, Guarantors.	
	B. D. Greene and Anson M. Bangs. Bondsmen.	108
	Check O. M. Carter on Asst. Treas. N. Y. Sept. 11, 1891, No. 167,671, favor J. F. Gaynor, $27,335.65, endorsed B. D. Greene.	Ex. 285
	Issued for voucher 12, contract 4572.	Ex. 216
4820	Sept. 16, 1892. Ed. H. Gaynor, contractor.	
	B. D. Greene and W. T. Gaynor, Guarantors.	
	B. D. Greene and John F. Gaynor, Bondsmen.	108

File No.	*Contract date.*	*(Shields) Exhibit number.*
	Check O. M. Carter on Asst. Treas. N. Y. Favor Ed. H. Gaynor, dated Dec. 16, 1892, No. 200,301, for $21,102.67, credited in acct. John F. Gaynor in Amer. Ex. Nat. Bk. Jan. 3, 1893.	Ex. 243
	Issued for Voucher 13 Dec., 1892, Contract 4820 of Sept. 16, 1892.	Ex. 167
	Check O. M. Carter on Asst. Treas. N. Y. favor E. H. Gaynor, dated May 25, 1893, No. 224,415, for $26,706.46, credited in acct. B. D. Greene in Amer. Nat. Bk. N. Y. June 5, 1893.	Ex. 240
	Issued for Voucher 6 May, 1893, contract No. 4280, of Sept. 16, 1892.	Ex. 168
5811	Nov. 15, 1894. Anson M. Bangs, contractor. John F. Gaynor and W. T. Gaynor, Guarantors.	Ex. 68
	W. T. Gaynor and Ed. H. Gaynor, Bondsmen.	Ex. 108
	Check O. M. Carter on Asst. Treas. N. Y. June 29, 1895 favor Anson M. Bangs.	
	No. 269,478 for $20,577.97, credited in acct. of B. D. Greene in Amer. Ex. Nat. Bk. July 5, 1895.	Ex. 240
	Issued for Voucher No. 66 June, 1895, on contract 5811, of Nov. 15, 1894.	Ex. 172
	Check O. M. Carter on Asst. Treas. N. Y. Apr. 5, 1895, favor Anson M. Bangs, No. 269,437 for $29,659.82, credited in acct. of W. T. Gaynor in Amer. Ex. Nat. Bk. N. Y. Apr. 8, 1895.	Ex. 246
	Issued for Voucher No. 29 April, 1895, on contract 5811 of Nov. 15, 1894.	Ex. 171
	Check O. M. Carter on Asst. Treas. N. Y. May 4, 1895, favor Anson M. Bangs, No. 269,455 for $7,500, credited in acct. John F. Gaynor, in Amer. Ex. Nat. Bk. N. Y. May 22, 1895.	Ex. 243
	Issued for Voucher No. 23, May, 1895, on contract 5811 of Nov. 15, 1894.	Ex. 171

Brunswick Harbor.

File No.	*Contract date.*	(*Shields*) *Exhibit number.*
3307	Oct. 30, 1886. Ed. H. Gaynor, contractor. B. D. Greene and John F. Caynor, Guarantors and Bondsmen.	Ex. 68 108
• 4037	May 31, 1889, Charles C. Ely, contractor. Jacob Paulsen and W. F. McCauley, Guarantors.	Ex. 68
	Jacob Paulsen and John F. Gaynor, Bondsmen.	108
	Check O. M. Carter on Asst. Treas. N. Y. dated July 3, 1889, favor Chas. C. Ely, No. 139,164 $3,929.95, endorsed B. D. Greene.	Ex. 285
	Issued for voucher No. 43 July, 1889, contract 4037.	Ex. 216
	Check O. M. Carter on Asst. Treas. N. Y. dated Aug. 13, 1889, favor Charles C. Ely, No. 139,176, $2,406.17, endorsed John F. Gaynor.	Ex. 285
	Issued for voucher 43, Aug. 1889, contract 4037.	Ex. 216

John ~~F.~~ H. Gaynor was manager of the work and Ely did not appear about the construction at all. Testimony of Cooper (Shields Vol. 1), pp. 507-8.

File No.	*Contract date.*	(*Shields*) *Exhibit number.*
4517	March 2, 1891. John F. Gaynor, contractor. Anson M. Bangs and W. F. McCauley, Guarantors.	Ex. 68
	B. D. Greene and ~~W. F.~~ George M. McCauley, Bondsmen.	
	Check O. M. Carter on Asst. Treas. N. Y. dated June 3, 1891, favor John F. Gaynor, No. 167,625 for $10,488.01, endorsed B. D. Greene.	Ex. 285
	Issued for Voucher No. 9, 4th quarter 1891, Contract 4517.	Ex. 216
5254	Mch. 20, 1893. Atlantic Contracting Co. W. H. Ray and W. F. McCauley, Guarantors.	

File No.	*Contract date.*	*(Shields) Exhibit number.*
	Anson M. Bangs and Eugene Hughes, Bondsmen.	
	Principal stockholders and incorporators.	
	John F. Gaynor,	
	B. D. Greene,	
	W. T. Gaynor. Charter.	Ex. 224
	Check O. M. Carter on Asst. Treas. N. Y. July 3, 1893, favor Atlantic C. Co. No. 224,434 for $7,182.28, credited to acct. W. T. Gaynor in Amer. Ex. Nat. Bk. N. Y. July 11, 1893.	Ex. 246
	Issued on voucher 1 July, 1893, contract 5254.	Ex. 216

Fort Clinch, Florida.

4637	July 20, 1891. Wm. H. Walsh, contractor.	Ex. 68
	Chas. C. Ely and W. F. McCauley, Guarantors and Bondsmen.	
	Check O. M. Carter on Asst. Treas. N. Y. dated Nov. 24, 1891, favor W. H. Walsh, No. 199,963 for $11,899.71, endorsed John F. Gaynor and B. D. Greene.	Ex. 285
	Issued for Voucher No. 2, 2nd. Qr. 1892, contract 4637.	216
	Wm. H. Walsh was Greene and Gaynor's foreman. See testimony of A. S. Cooper (Shields Vol. 1), pp. 508-509.	

Darien Harbor and Mouth of Altamaha River.

File No.	*Contract date.*	(*Shields*) *Exhibit number.*
5127	Dec. 20, 1892. Atlantic Contracting Co. Contractor.	
	W. F. McCauley, Elton A. Smith, Guarantors.	
	B. D. Greene and W. T. Gaynor, Bondsmen.	
	Check O. M. Carter on Asst. Treas. N. Y. dated Apr. 3, 1893, favor Atlantic C. Co. No. 224,386, for $3.493.72, credited to acct. J. F. Gaynor in Amer. Ex. Nat. Bk. N. Y. Apr. 14, 1893.	Ex. 243 Vol.
	Issued for Voucher No. 1, Apr. 1893, on contract No. 5127.	Ex. 216 Vol.
5133	Dec. 20, 1892. Atlantic C. Co.	
	Elton A. Smith and W. H. Ray, Guarantors.	
	B. D. Greene and W. T. Gaynor, Bondsmen.	
	Check O. M. Carter on Asst. Treas. N. Y. dated May 2, 1893, favor Atlantic C. Co. No. 224,406 for $3,834.22, credited in Acct. John F. Gaynor in Amer. Ex. Nat. Bank, N. Y. May, 8, 1893.	Ex. 243 Vol.
	Issued for voucher No. 1, May, 1893, on contract 5133.	Ex. 216 Vol.
5253	Mch. 1, 1893. Atlantic C. Co. Contractors.	68 Vol.
	Ed. H. Gaynor and W. H. Ray, Guarantors.	
	Anson M. Bangs and Eugene Hughes, Bondsmen.	
	Check O. M. Carter on Asst. Treas. N. Y. dated July 3, 1893, favor Atlantic C. Co. No. 224,438 for $7,558.83. Credited in acct. W. T. Gaynor in Amer. Ex. Nat. Bk. N. Y. July 11, 1893.	Ex. 246 Vol.
	Issued for voucher I, July, 1893, Contract 5253 of Mch. 1, 1893.	Ex. 168 Vol.
6049	Apr. 20, 1895. W. T. Gaynor, contractor.	68 Vol.
	John F. Gaynor and Ed. H. Gaynor, Guarantors and Bondsmen.	108 Vol.

File No.	*Contract date.*	(*Shields*) *Exhibit number.*
	Check O. M. Carter on Asst. Treas. N. Y. dated July 1, 1895, favor of W. T. Gaynor, No. 269,486 for $13,490.08, credited in acct. B. D. Greene in Amer. Ex. Nat. Bk. July 5, 1895.	Ex. 240
	Issued for voucher 14, July, 1895, on contract 6049 of Apr. 20, 1895.	Ex. 172
	Ed. H. Gaynor was the manager of that work.	
	See testimony of A. S. Cooper (Shields Vol. 1), p. 509. Vol. V3 G10907	

Altamaha River (Upper).

2933	Dec. 5, 1884, Ed. H. Gaynor, contractor.	68
	John F. Gaynor and B. D. Greene, Bondsmen.	108

Savannah River, Augusta.

2934	Dec. 5, 1884, Ed. H. Gaynor, contractor.	Ex. 68
	John F. Gaynor and Benj. D. Greene, Bondsmen.	108
3392	Feb. 9, 1887, John F. Gaynor, contractor.	68
	Jacob Paulsen and B. D. Greene, Guarantors.	108
	Edward Gaynor and Eli T. Bangs, Bondsmen.	108
4092	Sep. 13, 1889, W. T. Gaynor, contractor.	Ex. 68
		Ex. 108
	Eli T. Bangs and John F. Gaynor, Guarantors and Bondsmen. Checks O. M. Carter on Asst. Treas. N. Y. favor W. T. Gaynor, dated Oct. 12, 1889, No. 139,214 for $771.94. Nov. 21, 1889, No. 139,262 for $2,180.94. Dec. 7, 1889, No. 139,266 for $2,634. 43.	
	All endorsed John F. Gaynor,	Ex. 285

File No.	*Contract date.*	*(Shields) Exhibit number.*
	Issued for Vouchers 55 Oct. 1889 28 Nov. 1889 9 Dec. 1889	Ex. 216
4655	Sep. 9, 1891, John F. Gaynor, contractor. W. H. Ray and John H. Gaynor, Guarantors.	Ex. 68
	B. D. Greene and Thomas F. Gaynor, Bondsmen.	Ex. 108
	Check O. M. Carter on Asst. Treas. N. Y. favor John F. Gaynor, dated Nov. 27, 1891, No. 199,964 for $8,054.29 endorsed B. D. Greene.	Ex. 285
	Issued for Voucher 9, 2nd Qr. 1892, on contract 4655.	Ex. 216
4963	Oct. 24, 1892. Wm. H. Walsh, contractor. H. M. C. Smith and Jacob Paulsen, Guarantors. W. H. Ray and Chas. C. Ely, Bondsmen.	Ex. 68
		Ex. 108
	Check O. M. Carter on Asst. Treas. N. Y. favor W. H. Walsh, dated Nov. 17, 1892, No. 20[illegible]266 for $3,057.75, deposited in Savannah Bank and Trust Co.	Ex. 226
	Original check produced from Sub-Treasury bears endorsement of John F. Gaynor.	
	Issued for voucher No. 4, Nov. 1892, on contract 4963, of Oct. 24, 1892.	Ex. 216
	W. H. Walsh was foreman of Greene and Gaynor's brush camp during the performance of this contract, and the money to pay off the hands under this contract was carried by Gallaher, the bookkeeper of the Atlantic Contracting Co. to Augusta. Testimony of J. L. Gallaher (Shields Vol. 1). pp. 605-6.	

In the Greene and Gaynor hearing in New York the defendants objected to the admission of the contracts in evidence, but their objections were not sustained. All objections then made were withdrawn by Carter's counsel in the present case. (Wyman Vol. 9) type. p. 4489. No objection was made to the contracts in the present case. By agreement the printed volume of contracts put with the record, can be used in lieu of the originals for convenience. (Wyman Vol.) p.

CARTER'S KNOWLEDGE OF WHO THE REAL PARTIES IN INTEREST IN THE HARBOR CONTRACTS WERE.

Carter met B. D. Greene either at Charleston or after he reached Savannah in October, 1884. (Wyman Vol. 3) type. pp. 901-3.

The contract then in operation at Savannah was No. 2744, John F. Gaynor, contractor, let Sept. 1, 1884, Eli Bangs and Edward Gaynor, guarantors and bondsmen. There is in the record a series of letters passing between John F. Gaynor, Carter and Gen. Gillmore in April, 1885, relative to a proposed modification of the above contract. Exhibits 70, 71, 72 (Shields Vol. 1), pages 355-6-7-8-9, which put Carter on notice that B. D. Greene was interested with John F. Gaynor in these contracts.

In the letter of April 21, 1885, from Gen. Gillmore to Carter, he says:

> "I have had a conversation with Capt. B. D. Greene on the question of using fascines on the Fig Island jetty, and have concluded to modify my previous instructions in relative thereto."

Carter testified before the Examiner (Wyman Vol. 3), type. p. 987, as follows:

> "Q. You were on notice then, by reason of having met Captain Greene in Savannah, in connection with the work done there and by reason of this letter of Gen. Gillmore's and other things, that Captain Greene was connected with as early as 1885 and earlier, in the Savannah contracts, were you not?
>
> A. I was. These contracts were all ended, however, in September, 1885."

But contract No. 3282, John F. Gaynor, contractor, was let Oct. 28, 1886, with same guarantor and bondsman.

And on Jan. 16, 1889, contract No. 3890 was let by Carter himself to Wm. T. Gaynor, contractor, with B. D. Greene as guarantor.

Carter testified before the Examiner (Wyman Vol. 2), Print. p. 371, relative to the above contract:

> "Some time in the winter of 1887 and 1888, in a conversation with Gen. Gillmore, we decided that it would be better, in view of the fact that Captain Greene was interested in some contract work, it would be better for me to pay up that loan entirely and be under no obligations whatever to him."

In a letter from Carter's letter press book No. 4, p. 13, from Box B 31, Exhibit 31 (Shields Vol. 1), p. 298, Carter writes to B. D. Greene, Jan. 22, 1890:

> "The firm represented by you built at Tybee Roads, a training wall 10,000 feet long * * * between Jan. 28th and Aug. 19, 1889."

Nov. 5, 1890, contract No. 4224, for Savannah Harbor, John F. Gaynor, contractor, was let by Carter, with B. D. Greene as a guarantor and bondsman.

May 4, 1891, contract No. 4572, for Cumberland Sound, John F. Gaynor, contractor, was let by Carter, with B. D. Greene as a guarantor and bondsman.

There is in evidence Compl's Exhibit 224 (Shields Vol. 1),

pp. 630-633, a certified copy of the charter of the Atlantic Contracting Company, chartered July 22, 1892.

The charter states the names of the incorporators and stock held by them as follows:

Names.	Residences.	Amount.	No. of Shares.
John F. Gaynor,	Fayetteville, N. Y.	$14,965	2993
Benjamin D. Greene,	New York City, N. Y.	14,960	2992
William T. Gaynor,	Fayetteville, N. Y.	25	5
Robt. H. Greene,	New York City, N. Y.	25	5
James E. Chandler,	New York City, N. Y.	25	5

The first contract in the Savannah District by the Atlantic Contracting Company was contract No. 4960, let to it Oct. 22, 1892.

This contract was advertised Aug. 17, 1892, bids to be opened Sept. 17, 1892. (See book of contracts, p. 281.)

Notwithstanding the fact that the above contract was the first it ever bid on, and it had never been a bidder up to this time, the following letter was written by Carter on Aug. 10, 1892, to the Secretary of State of West Virginia, from letter press book from Box B 31, asking for a copy of the charter of that company (Shields Vol. 1), p. 622:

"SAVANNAH, GA., Aug. 10, 1892.

The Hon. The Secy. of State of West Va.,
Charleston, W. Va.

DEAR SIR:

I have the honor to request that you will send at once to me a copy of the articles of incorporation or charter of the 'Atlantic Contracting Company,' which was incorporated under the laws of your state in the latter part of July, 1892. If you do not have direct charge of this matter I beg that you will kindly refer this letter at once to the official who has, as I desire a reply by the 17th inst.

If there are any expenses connected with this please send bill with the information when amt charged will cheerfully be remitted.

Very truly yours,
O. M. CARTER."

There is in evidence Carter's check stub-book on Union Trust Co., of New York, Exhibit 61. On stub 107, there is the entry of a check issued Aug. 15, 1892, to Wm. H. Ohley, "For Certif Cont'g Co." for $5.00.

And in Box B 31, is a bill from Wm. A. Ohley, Secretary of State of West Virginia, to O. M. Carter, dated Aug. 12, 1892, asking for remittance of $5.00 for certified copy of charter of Atlantic Contracting Co., which is receipted. (Shields Vol. 1) p. 623.

The remarkable fact is here shown that within 19 days after the issue of the charter of the Atlantic Contracting Company, and prior to its becoming a bidder on any contract, Carter writes for a copy of that charter and pays out his private funds for it.

The Government contends that the evidence which will be hereinafter referred to, shows that Carter received a third part of the profits of the Atlantic Contracting Company in the river and harbor contracts let by Carter to it.

Carter's explanation of his writing for a copy of the charter of the Atlantic Contracting Company, is that he wanted to have it for his files in case they became the lowest bidders. (Court Martial Record Vol. 18) p. 4081.

But when they had not yet become bidders, and the bidding was open to the world, why should he have written in advance for the charter of this company and pay out his own private funds for it?

If he needed it from a governmental standpoint, why did he not require the proposed bidder to furnish it, or why did he not charge the cost of obtaining it in his Government accounts?

Indeed, he stated before the Board of Officers (Board Record Vol. 3), p. 772:

"When they (the Atlantic Contracting Co.) first bid, I

took the precaution to have them send me a certificate of incorporation, and as I remember it, it was incorporated under the laws of the State of West Virginia."

Why is it that, although there were a number of corporation bidders for various contracts let by him, this is the only case where it is disclosed he applied directly himself for a copy of charter, and that, too, in advance of the bidding?

Moreover, having obtained a copy of the charter, he was put on actual notice by it, that B. D. Greene owned practically one-half the stock of that company and John F. Gaynor the other half. Notwithstanding this, he stated before the Board of Officers on Sept. 23, 1897 (Board Record Vol. 1), p. 239, when he was first questioned about Greene's connection with the Atlantic Contracting Company, as follows:

"I know it is an incorporated company because I made them file a certificate of incorporation.

Q. The Gaynor Bros.?

A. I know one is president, another is treasurer and another secretary.

Q. Anybody else interested in it?

A. I have suspected that Capt. Greene had an interest in it, but I am not positive. I know that at one time he had an interest with them, but whether he has an interest yet, I don't know."

In this first contract, No. 4960, let to the Atlantic Contracting Co., on Oct. 22, 1892, the specifications say (Book of Contracts, p. 282):

"A firm will not be accepted as surety, nor will a partner be accepted as surety for a copartner or for a firm of which he is a member.

An officer of a corporation will not be accepted as surety for such corporation."

B. D. Greene was one of the bondsmen on this contract (Shields Exhibit 108) and Carter approved the bond, at a time when we now know that half the stock of that company stood in Greene's name. The Board of Officers, however, did

not know it, and Carter stated to them (Board Record Vol. 1), p. 240:

"Q. Did Capt. Greene's name appear on the bond at the time of this contract?

A. I don't know. I can tell by referring to it.

Q. If his name appeared on the bond, and you knew or suspected him to be a member of the firm, would that have influenced you to call on them for another bondsman?

A. If I had known that he was a member of the firm.

Q. You say that you suspected it?

A. I say that I thought he might have had an interest in the matter, but I didn't know."

Carter admits he so stated before the Board (Wyman Vol. 3), type. p. 927. But Carter did know at the time he accepted Greene as bondsman on that contract, that Greene owned practically half of the stock of the company, because he himself had just obtained a copy of the charter of that company which states the fact.

Moreover, even prior to the charter of the Atlantic Contracting Company, when contract after contract was let in the name of the Gaynors, and the work done by what Carter denominates Greene's firm in letter of Jan. 22, 1890 (Shields Vol. 1), p. 298, Carter accepted Greene as guarantor or bondsman on such contracts (see *ante*, pp. 106-110-111-114) in the face of the provisions in the specifications to the contrary.

Abuse of Discretion in Shortness of Advertisements.

Either because the Government had suffered heretofore by want of sufficient public advertisement, or because about this time Congress commenced to make the great appropriations for improving the rivers and harbors of the country, Congress in Sec. 3 of the River and Harbor Act of Aug. 11, 1888—25 Stat. L., p. 423, enacted:

> "That it shall be the duty of the Secretary of War to apply the money appropriated herein *and hereafter appropriated* for improvements of rivers and harbors, other than surveys, estimates and gaugings, in carrying on the various works, *by contracts, or otherwise,* as may be most economical and advantageous to the Government.
>
> Where said works are done by contract, such contract shall be made after sufficient public advertisement for proposals, in such manner and form as the Secretary of War shall prescribe."

This provision of the Act of Aug. 11, 1888, was carried into the Supplement of the Revised Statutes as a permanent law. See Supplement of Revised Statutes, p. 610.

Now following this act, the President and the Secretary of War promulgated on Feb. 9, 1889, certain regulations for the Army including the Corps of Engineers, known as "U. S. Army Regulations, 1889," which is offered in evidence (Shields Vol. 2), p. 1031. The similar Army Regulations of 1895 is also offered in evidence. (*Idem,* p. 1031.)

These regulations formally issued by the President, have the force of law. *U. S.* v. *Freeman* 3 How. 367. *Gratiot* v. *U. S.* 4 How. 117. *Kurtz* v. *Moffitt,* 115 U. S., 503.

From the Army Regulations of 1889, the following provisions are taken:

"ADVERTISING AND PRINTING," ARTICLE LVI.

"Section 602. Officers advertising sales of property, or for proposals for labor or supplies, will, as a general rule, allow thirty days to intervene between the date of the first publication of the advertisement and the time of sale or date designated for the opening of proposals. A shorter period may be named, if the necessities of the service render it advisable, but no period of less than ten days shall be designated except in case of emergency."

The Army Regulations of 1895 add this provision:

"ADVERTISING FOR PROPOSALS."

"Section 520. In case of *large* purchases a period of *thirty or more days* should intervene between the date of *first publication* and of opening proposals. In small purchases, from ten to thirty days should intervene, etc."

The Army Regulations of 1889 provide:

"CONTRACTS AND PURCHASES," ARTICLE LVII.

"Section 617. Officers required to make contracts or purchases will, when practicable, give public notice, in accordance with Article LVI, inviting sealed proposals."

"Section 621. An officer charged with the duty of making a contract, or purchase, is responsible under the laws and regulations for his course of action. Orders to make a contract or purchase, without inviting competition, are not sufficient to justify the procedure and will not be given."

"CONTRACTS—EXECUTION AND PERFORMANCE."

"Section 653. Upon receipt of the contract at the proper bureau of the War Department, it will be examined to see that it complies with the laws, regulations, and orders. If found correct, the approval of the proper officer will be endorsed thereon. Should any illegality be discovered, it will be submitted to the Secretary of War for his action.

Section 654. Contracts will be executed in quintuplicate, etc."

This section also provides that the one of the originals intended for the returns office, "will be accompanied by copies of the advertisement inviting proposals."

From the foregoing it will be seen that Congress had prescribed that contracts should be let only after sufficient public advertisement.

That it was the duty of the local officer to advertise proposals in general 30 days or more. That in case of large contracts it was his duty to advertise 30 days or more.

SHORTNESS OF CARTER'S ADVERTISEMENTS.

The newspapers in which Carter was required to publish advertisements for proposals were of two classes, viz.:

(1) Local newspapers at the place where the work was to be done.

(2) Engineering journals or periodicals devoted to public works, to which contractors usually look for such advertisements. Testimony of Schermerhorn for defense (Shields Vol. 3), p. 2016.

The importance therefore of advertising contracts of this character for a sufficient length of time in these engineering journals, especially where the contracts were large and the bidders were to be attracted from all over the United States, cannot be underestimated.

The size of the contracts, river and harbor improvements, and the length of time advertised in the different papers, in contracts from 1890 to 1897, is shown in Complainant's Exhibit 161, Shields.

The longest time advertised in the local papers and the

longest time advertised in the engineering journals or periodicals, is shown by that table as follows (See Exhibit 161 Shields): Vol. 31

Contract No.	Date of Contract	CONTRACTOR	PLACE OF WORK	SIZE OF CONTRACT	Local Papers Days	Engin'r'g Journal Days
*4224	1890	J. F. Gaynor	Savannah	$235,000	21	16
*4517	1891	J. F. Gaynor	Brunswick	19,000	19	14
*4572	1891	J. F. Gaynor	Cumberland Sound	97,500	18	11
*4637	1891	W. H. Walsh	Ft. Clinch	12,000	17	13
*4655	1891	J. F. Gaynor	Augusta	15,000	16	14
*4820	1892	E. H. Gaynor.....	Cumberland Sound	170,000	26	21
*4960	1892	Atlantic C. Co	Savannah }	3,150,000	25	23
.....	1892	Ross (Dredging) ..	Savannah }			
*4963	1892	W. H. Walsh	Augusta	10,000	19	18
*5127	1892	Atlantic C. Co	Darien	22,500	27	19
*5133	1892	Atlantic C. Co	Altamaha R. ...	10,000	22	14
*5253	1893	Atlantic C. Co	Jekyl Creek ...	21,000	20	19
*5251	1893	Atlantic C. Co	Brunswick	18,000	23	23
5359	1893	A. J. Twiggs.....	Augusta	22,000	15	11
*5811	1894	Anson M. Bangs ..	Cumberland Sound	170,000	19	16
*6049	1895	W. T. Gaynor	Darien	44,000	23	16
*6515	1896	Atlantic C. Co	Savannah }	1,005,000	22	19
.....	1896	Moore (Dredg.) ...	Savannah }			
*6517	1896	Atlantic C. Co	Cumberland Sound	2,350,000	22	19

*(All Greene & Gaynor contracts, see Ante pp. 106 to 115).

Think of it, a $3,150,000 contract in 1892 advertised only for 23 days in the engineering journals? And a $2,350,000 contract in 1896, advertised for only 19 days in the engineering journals in the face of the Act of Congress of August 11, 1888, and of the regulations requiring large contracts to be advertised 30 days or more?

CARTER'S EXPLANATION.

Blunford's Table.

It is claimed by Carter, however, that this was only an error of judgment, and that other Engineer Officers did the same thing.

In proof of this he has offered a compilation (Defendant's Exhibit 24, Court Martial) made up by a Mr. R A. Blanford, a civil engineer, expert witness for the defense, from the printed volumes of the Chief of Engineers Reports. (Court Martial Record Vol. 13) p. 2930, 2964.

His table is found on Exhibit 24, pp. 59 and 60, and is headed

> "Proposals opened in less than 30 days after date of Advertisement, compiled from Reports of Chief of Engineers from 1880 to 1897, and including Atlantic and Gulf Coasts from North Carolina to Texas."

Blanford testified that it covered every contract let from 1880 to 1897 in the territory mentioned in which the length of advertisement appeared in the Reports of the Chief of Engineers (Court Martial Record Vol. 13), p. 2964. That table shows that in numerous instances prior to the Act of Congress of August 11, 1888, contracts were let after advertisement for a less time than 30 days, but that after Aug. 11, 1888, not a single jetty contract appears in his list, and no contract of any sort except two small dredging contracts, both let by Major W. S. Stanton in 1894, one at Roanoke River, N. C. for $25,656.82 and one at Beaufort Harbor, N. C., for $8,744.51. And as to them, it appears from the table that they were advertised for a calendar month, Feb. 10 to March 10, 1894, which was 28 days.

Whether or not the report of the Chief of Engineers disclosed that the advertising for 28 days only, of those two small dredging contracts was necessitated by an emergency caused by some sudden filling up of the navigable channel, is not stated. However this may be, these are the only instances given in this table where contracts were let on advertisements for less than 30 days.

Carter's Second Explanation.

Carter's explanation is that it was his practice when he prepared the "form" of advertisement to the Chief of Engineers to fill in the date of the advertisement and the date of the opening of the bids, and that when the "form" came back to him approved by the Secretary of War, he inserted the advertisements as soon as possible in the newspapers, and if there was a delay in Washington in approving the "form" so that when it got back to him it was not full 30 days before the bids were opened, the responsibility for it was not his, but that of his superior officers. (See his testimony, Wyman Vol. 6) p. 17 to 19.

This explanation will not do.

THE METHOD OF PROCEDURE IN LETTING CONTRACTS.

The counsel for the defendants proved by Mr. Sterly the usual course pursued in regard to the preparations for and letting of contracts, which was as follows: The War Department notified Carter, the engineer officer in charge, of an appropriation having been made for doing the work at the particular harbor. Carter then submitted a project of expenditure to the Chief of Engineers at Washington through the Division Engineer, the Division Engineer being stationed at Baltimore, Maryland. The Division Engineer approved the project. It was then approved by the Chief of Engineers who returned the project to Carter. Carter then prepared a draft of the specifications for the contract and a draft of the advertisement and forwarded copies of them to the Chief of Engineers, Washington, and asked for authority to advertise and to have the specifications printed. In due course the form of specifications and form of advertisement were respectively approved or altered and approved, and authority to advertise given to Carter. The request by Carter for authority to advertise stated the papers in which it was proposed to adver-

tise and the number of times that the advertisement should appear in each paper. (Testimony of Sterly, Shields Vol. 1) pp. 775, 776, 777. Carter then advertised in the newspapers, the advertisements stating the day, place and hour when bids would be opened. Carter then made an abstract of all the bids received and this with a copy of each proposal was sent to the Chief of Engineers direct, with recommendation that the contract be awarded to the lowest responsible bidder. (Testimony of Sterly, Shields Vol. 1) p. 777. This was the usual course.

The Army Regulations of 1889, Secs. 597, 598, 599 and 600, 605, show that the power therein intended to be reserved to Secretary of War to be exercised through the Chief Clerk of the War Department, had no relation to the definite fixing of the length of time advertisements were to run. The authority reserved was:

(a) To be informed of the necessity of advertising, and to grant authority to advertise.

(b) To fix the particular newspaper or papers on the official list of the department in which the advertisement was to appear, the local officer suggesting the papers and stating their rates.

(c) To have the Chief Clerk supervise the form so as to make the officers conform to Sec. 605, which directs that in advertising, the officers will avoid all superfluous words in the description of supplies and property and in headings and titles, as a matter of economy.

(d) To be informed by the officer of the *number* of insertions desired, and to have the Chief Clerk of the War Department see that the request conforms to the requirement of Sec. 603, as to the number of insertions.

That it was never intended to have the Chief Clerk assume the responsibility of fixing the length of time advertisements were to run is shown by the prescribed form of request which

the officer is to make, which neither asks for authority to publish for a given time nor states the date when the bids were to be opened; the form prescribed is:

"Sec. 600. Request for "special" authority will be made in the following form:

Office, of .....
.....
....., 18....

SIR:

I inclose herewith a copy of an advertisement, dated ..... 18..... inviting proposals for ..... and request written authority to publish the same in the following newspapers:

..... insertions in .....
..... insertions in .....

Very respectfully, your obedient servant,
(Here sign officially).

To the Chief Clerk,
War Department,
Washington, D. C.
(Through .....)."

John Tweedale, Chief Clerk of the War Department, a witness for the prosecution, testified before the Court Martial (Court Mar. Record Vol. 5), p. 1090:

"The requests come, in accordance with the regulations, to the Chief Clerk of the Department, and then they are submitted to the Secretary of War for his action. The Secretary decides in what papers the advertisements shall be inserted, and gives instructions accordingly, and thereupon approves the request for authority.

Q. Is any other matter submitted to him in connection with that request for authority to advertise?

A. Nothing whatever, but the papers show the intermediate endorsements.

Q. What action, if any, is taken in the Department upon the copy of the proposed advertisement?

A. The copy of the proposed advertisement is merely looked at, to see whether there are any superfluous words in it. The regulations require that it shall be concise in matter; that is as far as the advertisement is looked at.

Q. The approval of the Secretary given to that request to advertise, how far does it go towards approving the form and dates of the advertisement?

A. That is not considered.

Q. Not at all?

A. Not at all.

Q. To whom is that left—the question of dates?

A. That is left to the advertising officer, who knows all about those things; the Department knows nothing about it.

Q. Why is it that the authority of the Secretary of War is necessary to advertise?

A. The law requires it.

Q. Do you recall the Statute?

A. Section 3828 R. S.

'No advertisement, notice or proposal for any Executive Department of the Government, or for any Bureau thereof, or for any office therewith connected, shall be published in any newspaper, except in pursuance of a written authority for such publication from the head of such Department; and no bill for any such advertising, or publication shall be paid, unless there be presented with such bill, a copy of such written authority.'

Q. In passing upon a request for authority to advertise, and submitting it to the Secretary of War, if the proposed advertisement bore a date prior by four or five weeks to the date on which you submitted it to the Secretary, would that date be a factor in passing upon the question?

A. Not at all.

Q. It would not matter what the date was?

A. No.

Q. Nor how long anterior to the date submitted?

A. No, sir."

Page 1096 (Questions by a member of the court):

"Q. Suppose an advertisement was sent by a District Engineer to the War Department with the date of advertisement and the date of opening the bids inserted, and it received the approval of the Secretary of War, and

came back to the District Engineer and it was manifest from the date of the opening of the bids which that advertisement bore, that there was not a sufficient length of time intervening between the first insertion of the advertisement in the newspaper and the date of the opening of the bids, what would be the responsibility and duty of the District Engineer in regard to that matter?

A. The regulations provide that he shall give 30 days' notice, and, if the advertisement when it came back to him, if the dates were such that there would not be 30 days' notice, it would be his duty to comply with the regulation, and give the notice required by the regulations.

Q. In what way?

A. He would have to change the dates in the advertisement. The Secretary of War could not change the dates for the reason, that if he did, there might be a delay in the mails, or from some cause, and when it got back to the officer there would not be the 30 days required.

Q. Is it customary for all officers to insert the dates in making their applications for authority to advertise?

A. Sometimes the dates are left blank.

Q. That makes no difference as far as the approval is concerned?

A. No, sir."

CARTER'S ADVERTISEMENT OF 1896 CONTRACTS.

Ante-dating Advertisements.

Complainant's Exhibit 635 (Wyman Vol. 9), type. p. 4723, is Carter's request for authority to print advertisement for 1896 contract at Savannah and for authority to print 300 copies of the specifications, it reads:

"SAVANNAH, GA., June 4, 1896.

The Chief Clerk of the War Department,
Washington, D. C.

(Through Brig. Gen. Wm. P. Craighill, Chief of Engineers. U. S. A., Washington, D. C., and Colonel Peter C.

Hains, Corps of Engineers, U. S. A., Division Engineer, South-east Division Baltimore, Maryland.)

SIR:

I enclose herewith a copy of an advertisement inviting proposals for constructing jetties in Cumberland Sound, Georgia, and request authority to publish the same in the following official newspapers:

6 insertions in Morning News, Savannah, Ga.
6 insertions in the Florida Citizen, Jacksonville, Fla.
3 insertions in the Marine Journal, New York, N. Y.
3 insertions in Engineering News, New York, N. Y.
3 insertions in Engineering and Building Record, New York, N. Y.

I also request authority to print 300 copies of the accompanying specifications.

Very respectfully, your obedient servant,

(Signed) O. M. CARTER,
Capt. Corps. of Engrs., U. S. A."

The form of advertisement for Cumberland Sound inclosed Exhibit 637 (Wyman Vol. 9), pp. 4732 and 4319, was as follows (the changes afterwards made by the Chief Clerk of the War Department being indicated by letters in italics:

"U*nited* S*tates* Engineer Office, Savannah, Ga., June 6, 1896. Sealed Proposals for Constructing Jetties at Cumberland Sound, G*eorgi*a. will be received here until 12 M., city time, July 6, 1896, and then publicly opened.

All information furnished on application.

O. M. CARTER,
Capt. *Corps.* of Engrs. *U. S. A.*"

For reasons that appear in the correspondence (Wyman Vol. 9), pp. 4723 to 4729, it appears that Carter's requests in letter of June 4, 1896, were not favorably acted upon until August 15, 1896.

Upon Carter's request of June 4, 1896, is then entered this endorsement (Wyman Vol. 9), type. pp. 4728, 4729:

"Aug. 15, 1896.

Respectfully forwarded to the Chief Clerk of the War Department with recommendation that the *authority within asked for be granted.*

Amendment to the specifications *has been* made by this office.

A. MacKenzie,
Acting Chief of Engineers."

"Aug. 15, 1896.

Approved,
Daniel S. Lamont,
Secretary of War.
J. S."

Now it will be noted that if this approval of the "form" of advertisement by the Secretary of War, was intended to fix the date of the advertisement and date of opening of bids as left in the "form" of advertisement when returned to Carter, since the date of opening July 6th had long since passed on Aug. 15th, the approval of the Secretary of War was of an impossible date.

This demonstrates the correctness of the Chief Clerk's testimony, that the approval of the form of advertisement was never intended to fix the time the advertisement had to run, that duty being left to and imposed upon Carter under the regulations guiding the exercise of his discretion.

Indeed the Army Regulations to which we have already referred did not require Carter to ask authority to advertise for any special time, and in his letter of June 4, 1896, inclosing a copy of the specifications and a form of advertisement, he did not ask for any such authority. His request was to

publish the advertisement in certain newspapers, and for leave to print 300 copies of the specifications, and that was all.

And the "authority requested" was "granted" and nothing more.

Carter, however, contends that since the Chief of Engineers in his endorsement of Aug. 15th approved the specifications and since the specifications contained at its head a copy of the form of advertisement (See original form of specifications forwarded to Washington June 4, 1896, by Carter, Exhibits 636 and 634, Wyman), and since these specifications now contain at the head a form of advertisement dated June 6, 1896, bids to be opened Sept. 8, 1896, that therefore these changes were made in the office of the Chief of Engineers and that by approving the specifications on Aug. 15th, only 24 days prior to Sept. 8th, the Chief of Engineers authorized an advertisement of these $3,350,000 of contracts for only 24 days.

But the Chief of Engineers had amended and approved the specifications prior to forwarding them and the "form" of advertisement to the Chief Clerk, because it is so stated in the endorsement put on the papers on Aug. 15th, in which he forwards same to the Chief Clerk. Moreover, the Chief Clerk exercised his function of striking out "superfluous words," on the "form" of advertisement (Exhibit 637, *ante*, p. 132) submitted to him under Sec. 600, Army Regulations of 1889, and not on the form at the head of the specifications, Exhibits 634 and 636. The only thing the Chief Clerk had to do with the specifications was to pass upon the request to print 300 copies.

Now the evidence is not silent as to who is responsible for the dates June 6th and Sept. 8th, 1896, in the form of the specifications, Exhibits 634 and 636 (Wyman). Carter was

in Washington Aug. 15, 1896, and he received the approved specifications on that day.

Exhibit 266 (Shields Vol. 1), p. 842, is a telegram from Carter at Washington, D. C. to M. A. Connolly, his confidential clerk at Savannah, which reads:

"WASHINGTON, D. C., Aug. 15, 1896.

Connolly, U. S. Engrs. Ofs.,
Sav. Ga.

Advertise immediately all work Fernandina, Savannah and Inside Route to be opened Tuesday *Sept. eight.* No change in list of papers. *I have specifications.*

CARTER,
Engrs."

On the same day, Carter telegraphs Connolly from New York (Shields Vol. 1), p. 843:

"NEW YORK, Aug. 15, (1896).

Date all advertisements June sixth, but all will be opened September eighth.

CARTER,
Engrs."

A specific direction by Carter to date back the advertisements 70 days before they would actually appear in the newspapers.

At that time, Aug. 15, 1896, Carter's chief clerk, Sterly, was visiting Patchogue, Long Island. On or about Aug. 16, 1896, Sterly received the specifications sent on *from* the Engineers office at *Washington* (Shields Vol. 1), pp. 845-846.

Since Carter had them the day before in Washington, it is very clear that *he* must have sent them on himself or had

them sent on under the official cover of the Engineer's office to Sterly. They were sent on to Sterly to have him superintend the printing of the specifications in New York.

When Sterly received the specifications the date of the opening of the bids in the form of the advertisement printed at the head of the specifications had been changed from July 6 to Sept. 8, 1896. See testimony of Sterly (Shields Vol. 1), p. 847. An examination of the writing "Sept. 8" on Exhibits 634 and 636, which appears in two places on each of these exhibits, comparing the same with Carter's writing "Sept. 1, 1895," on check stubs 94 and 98 in Exhibit 67, "R. F. Westcott, O. M. Carter, Atty." leaves little doubt that the date "Sept. 8" was filled in by Carter himself, as he had fixed the date in his telegram to Connolly. The "Sept." in the specifications departs a little from Carter's usual style of writing those letters, but conforms to the style and form of letters used occasionally by him as indicated on the stubs referred to.

Carter denies that he changed the date from July 6 to Sept. 8, but testified (Court Martial Record Vol. 17), p. 3856:

> "The date had been put in originally to open bids July 6th, and, as that time had passed, it was impossible to let that date remain, and I suggested that I thought a long enough time would be September 8th, and that date was inserted in the office of the Chief of Engineers,—I don't remember by whom—and it was seen and approved by Col. MacKenzie, who I think was Acting Chief of Engineers at that time, and sent it to the Chief Clerk's Office for approval there, as I remember, but I could not get the approved copy, because it had to go to the Record Division, and be made a record in the Secretary's office. I left on the 'limited' for New York that afternoon, and told Goethals (Carter's friend in the Chief of Engineer's Office) to send the specifications to my chief clerk (Sterly), who was at Patchogue, L. I., etc."

In the first place Carter telegraphed to Connolly on Aug. 15th from Washington, that he, Carter, then had specifications (*ante*, p. 135).

In the second place, the "form" of advertisement which Carter submitted for approval for Cumberland Sound was a separate and distinct paper (see Exhibit 637, Wyman) from the specifications, and it was upon this form the Chief Clerk made his corrections, striking certain superfluous words, and to this day the date for opening bids "July 6, 1896," stands unchanged. And this was the paper which Section 600 of the Army Regulations required should be sent up to be passed on. And when corrected by the Chief Clerk of the War Department or Secretary of War, it was the only paper required to be recorded.

In the third place, before the Chief of Engineers sent the papers over to the Chief Clerk of the War Department on Aug. 15, 1896, he could not tell what changes the Chief Clerk was going to make in the form of advertisement. Yet we find that the form at the head of the specifications has been corrected by some one so as to conform to the form as corrected by the Chief Clerk of the War Department. For instance, in the form at the head of the specifications the letters "all" and "Corps of" and "U. S. A." are stricken to conform to the corrected "form" on Exhibit 637 after corrections made by the Chief Clerk.

Who made those corrections in the form on the specification? Certainly not the Chief of Engineers, because he had already approved the specifications. Not the Chief Clerk or Secretary of War, because the form which they approved differs in essential particulars from the form at the head of the specifications. It differs in that the "form" approved by the former still has the date of opening "July 6," while the latter has "Sept. 8."

If the Chief of Engineers had made this correction in the form of advertisement at the head of the specifications, before he sent the papers over to the Chief Clerk of the War Department, and if the Chief Clerk had the duty imposed on

him of correcting the form on the specifications as well as the special form sent to him for correction, and if he be the person who made the correction by striking "all," "Corps of" and "U. S. A." in the form at the head of the specifications, so as to make the same conform to his corrected "form," Exhibit 637, then surely he would have made the latter conform to the former changing "July 6," to "Sept. 8," if, indeed, as Carter claims, the latter date was filled in before the Chief Clerk of the War Department received the papers.

Precisely the same changes were made as to the Savannah Harbor contract for 1896. See Exhibit 634 (Wyman) and Exhibit 268 (Shields), which passed through the Chief of Engineers' Office, and through the Chief Clerk of the War Department office at the same time (Aug. 15, 1896).

The conclusion is inevitable that the corrections in the form of advertisement at the head of the specifications were made by Carter or under his direction and that it was he who is responsible for the opening of bids "Sept. 8," which only allowed him 19 days within which to advertise in the engineering journals contracts for work aggregating $3,350,000. (*Ante*, p. 125.)

Indeed, if the facts be as Carter testified that (*ante*, p. 136):

> "I suggested (to somebody in the Chief of Engineer's Office) that I thought a long enough time would be September 8th, and that date was inserted in the office of the Chief of Engineers—I don't remember by whom—"

it would not lessen Carter's culpability. He was the man or the responsible man on the ground, in charge of the work, knew the facts, and the regulations requiring the advertisement of large contracts for 30 days or more. The mere fact that Col. MacKenzie, Acting Chief of Engineers, in looking over the engineering features of the specifications which alone were being attacked by the criticisms of the Division Engi-

neer, Col. Haines (see Exhibit 635, Wyman Vol 9), p. 4725, may have, as Carter testified, seen the form of the advertisement at the head of the specifications with "Sept. 8" in it at the time he approved the specifications, would not relieve Carter from the responsibility of suggesting and causing to be put in a totally inadequate time for advertisement. Indeed, no officer whose motives in doing so are improper, is relieved from even criminal responsibility, for inducing his superior to approve improper things. If he has deceived the superior officer, the guilt is his alone. If the superior is knowingly a party to his wrong, they are both guilty.

Faust v. *United States*, 163 U. S. 452.

In the present instance, however, it does not appear that under the law, the Chief of Engineers was charged with the duty of criticising the form of advertisement, that was a duty belonging to the Chief Clerk of the War Department. The responsibility for complying with the regulations as to length of advertisement was on the local engineer, and there is no evidence showing that Col. MacKenzie had his attention directed to any fact indicating that Carter intended to advertise for less than 30 days.

CARTER'S ADVERTISEMENT OF THE BIG CONTRACT OF 1892.

Antedating Advertisement.

It appears that the big contract of 1892 was first advertised July 27, 1892, bids to be opened August 20, 1892, though the advertisement was dated July 18, 1892. Testimony of Sterly (Court Martial Record Vol. 3), p. 575.

While this advertisement was running and prior to the date of opening bids, the plan of letting as then advertised was abandoned and on August *18th* request for authority for

a new advertisement was directed by telegram to Carter from Washington as follows (Court Martial Record Vol. 3), pp. 578-9:

"Telegraph at Government Rates.
WASHINGTON, D. C., August 18, 1892.

Captain Carter,
Southern Bank Building,
Savannah, Ga.

Authority to advertise Savannah dredging asked for August third not granted.

On account of eight-hour law, returned unopened all bids for stone, etc., in Savannah Harbor invited July eighteen.

Request authority to re-advertise for bids for improving harbor as a whole; one set of specifications only, covering all work.

H. M. ADAMS,
Engineers."

On the same day, Aug. 18, 1892, Captain Carter replies by telegram (Court Martial Record Vol. 3), p. 579:

"Do not fully understand telegram, the clause relating to 8 hour law has been attached to all specifications that were sent out relating to stone, etc., in Savannah Harbor. Is this sufficient, or must the whole work, jetty and dredging, be let to one contractor on new specifications?"

On the same day, Aug. 18, 1892, Adams replies to Carter by telegram (Court Martial Record), p. 580:

"The whole work on jetties and dredging Savannah Harbor must be re-advertised in one set of specifications, by direction of General Casey."

On the same day, Aug. 18, 1892, Carter telegraphs to Chief of Engineers (Court Martial Record Vol. 3), p. 579:

"Please return Savannah Harbor specifications as I have no copy, that I may prepare combined sets as soon as possible."

Now, notwithstanding that the direction for re-advertising the 1892 contract for Savannah Harbor was not given until August 18th, we have the remarkable fact that the advertise-

ment printed on the specifications bears date August 17, 1892. (See book of contracts, p. 281.) Vol. 22 p. 10147

The still more remarkable fact is that Carter's letter inclosing the "form" of advertisement and asking authority to print it is also antedated to Aug. 17, 1892 (Court Martial Record Vol. 3), p. 615: Vol. 3 p. 1292

"SAVANNAH, GA., Aug. 17, 1892.

The Chief Clerk of the War Dept.,
Washington, D. C.

(Through the Chief of Engineers, U. S. A., Washington, D. C., and Col. Wm. P. Craighill, Corps of Engrs. U. S. A., Engr. S E. Division, Baltimore, Md.)

SIR:

I enclose herewith a copy of an advertisement inviting proposals for improving Savannah Harbor, Georgia, and request authority to publish the same in the following official newspapers, etc., etc.

I also request authority to print 250 copies of accompanying specifications.

Very respectfully, etc.,

O. M. CARTER,
Capt. Corps of Engrs. U. S. A."

Now, what could have been Carter's object in dating back this advertisement to Aug. 17th, when he did not even himself know until the 18th that the advertisement would have to be made, and he was not even directed until the 18th to ask for authority to advertise?

The answer is very simple, the form of the advertisement he prepared was for opening bids Sept. 17, 1892. Sept. 18, 1892, was Sunday. If Carter had authority even on Aug. 18th to advertise which he did not have, he could not have put in the advertisement in the papers so as to appear before Aug. 19th, and 30 days would have thrown the opening on Sept. 18th, on Sunday, and that would have forced him to fix it for the 19th, which would have given bidders two more days to get notice. By antedating the advertisement to Aug. 17th, and fixing the opening Sept. 17th, he made it

appear on the face of the form of advertisement, and by the date of his letter of request that he had allowed full 31 days' notice, and he gained two days in the time of opening bids.

The authority was granted to advertise on Aug. 20, 1892. (Court Martial Vol. 3) p. 616. The first advertisement appeared in the local paper Aug. 22, 1892, and in the engineering papers Aug. 25th, the latter being 23 days prior to opening of bids. (Court Martial Record Vol. 3) p. 583, and Exhibit 161, Shields.

Now after the advertisement for this contract had commenced to run, Carter on Aug. 24, 1892, wrote a letter to the Chief of Engineers (Court Martial Record Vol. 3), p. 581, in which he set out the disadvantages and the probability of increasing the cost to the Government, of not allowing separate bids to be required for the dredging, from those for jetty work. He points out that clause 53 of the specifications as approved, cover both dredging and jetty work, and provide that:

> "The work will not be divided between two or more contractors, but will be awarded to the lowest responsible bidder."

And he recommends that the specifications be amended so that they should provide that:

> "The United States reserves the right to award the contract for jetty work (items 1 to 9, inclusive) to one bidder, and that for dredging (items 10 and 11) to another."

This request to modify the specifications was approved by the Secretary of War Aug. 27, 1892, as shown by the following telegram to Carter (Court Martial Record Vol. 3), p. 617:

"WASHINGTON, D. C., Aug. 27, 1892.

To Capt. Carter,
Southern Bank Bld.,
Savannah, Ga.

Secretary of War has authorized change in specifications for Savannah Harbor, as recommended in your letter of August twenty-four.

H. M. ADAMS,
Engineers."

Carter claims that the bringing about of the change in the specifications operated in favor of the Government and directly against the interest of Greene and Gaynor. He testified (Wyman Vol. 6), print. p. 38:

> "I had been informed that if the specifications were left as the Chief had ordered, it would practically give Greene and Gaynor a monopoly of the work and shut out some men who desired to bid on the dredging, but who could not bid on it if they were required to bid on the jetty work also."

But if Carter feared that Greene and Gaynor were in a position to monopolize the jetty work, was not this a mighty reason for a more extended advertising than 23 days in the engineering journals to reach big contractors all over the country? With the certainty (Court Martial Record Vol. 3), p. 577, that P. Sanford Ross, Jacob Friday, The International Contracting Co., Skinner & Wallace, Rittenhouse, Moore & Co., Kingsbridge Co. and numerous other had already applied for specifications under the withdrawn advertisement of July, 1892. That after the readvertisement and prior to Aug. 24, 1892, The Virginia Dredging Co., The San Francisco Bridge Co., of New York, and others had already applied for specifications. What better method could Carter have devised to prevent these large companies, principally engaged in dredging, from competing seriously with Greene and Gaynor on the jetty work than by fixing the specifications so that the dredging people could get the dredging, which was a job of $1,000,000 (Carter's testimony, Wyman Vol. 6), p. 29,

big enough to satisfy anybody, without seriously competing for the jetty work?

It appears to have had just that natural effect whether Carter was striving for it or not, and man is usually presumed to have intended the natural consequences of his act. We do not contend, however, that it was not a proper thing to have provided for letting the dredging work in so large a contract separately from the jetty work, but if Carter's motive for recommending it be what he states it was, he should have afforded by longer advertisements than 23 days in the engineering journals, the opportunity to other jetty contractors to compete with Greene and Gaynor.

That Carter persistently fixed his form of advertisement, forwarding it to Washington, and afterwards so publishing it, that neither the attention of the authorities at Washington or contemplated bidders would have their attention attracted to the fact of the shortness of the time he was actually advertising his contracts, is shown by the following figures taken from the book of contracts in evidence covering all jetty contracts from 1892 to 1897, and from (*ante*, p. 125):

Contract No.	Date of Advertisement	Date of Opening Bids	Apparent Time of Advertisement	Actual Time of Advertisement	
				Local Papers	Engineering Journals
	1892	1892	Days	Days	Days
4820	Aug. 1st	Sept. 10	40	26	21
4960	Aug. 17	Sept. 17	31	25	23
4963	Aug. 18	Sept. 19	32	19	18
5127	Oct. 24	Nov. 29	36	27	19
5133	Oct. 18	Nov. 19	32	22	14
	1893	1893			
5253	Jan. 7	Feb. 7	31	20	19
5254	Jan. 30	Mar. 4	33	23	23
5359	May 19	June 19	31	15	11
5811	Aug. 29	Sept. 29	31	19	16
	1895	1895			
6049	March 2	Apr. 6	35	23	16
	1896	1896			
6515	June 6	Sept. 8	94	22	19
6517	June 6	Sept. 8	94	22	19

CARTER'S EXCUSE THAT OTHER ENGINEERS DID THE LIKE.

Before the court martial, however, certain officers testified in Carter's behalf to the effect that they had advertised contracts in certain instances for less than 30 days, and Carter undertakes to enumerate them in his testimony (Wyman Vol. 6), print. pp. 295-6, and to tell what he says they testified to. We will observe, however that the Army Regulations already referred to (*ante*, p. 123) allow certain small contracts and emergency contracts to be advertised for even ten days or less. The fact that some officer should have advertised a small emergency contract for less than 30 days, would not affect the question at issue. The point we insist upon is that Carter, through a series of years after the Act of Aug. 11, 1888, persistently advertised tremendous contracts for so short a time that, taken in connection with other things, it shows an intent to suppress competition.

WITNESSES FOR DEFENSE.

Major Curtis McD. Townsend, an officer in the Corps of Engineers and a witness for the defense, testified on cross-examination (Shields Vol. 3), p. 1832, that he was assistant to Col. Lydecker, who was court martialed in reference to the building of the Washington Aqueduct. He was located there from 1882 to 1886 and afterwards:

"Q. Were you in charge of the immediate supervision of the work or any part of it?

A. I was assistant on the tunnel and on the reservoir. That was the main part of it.

Q. While you were assistant on the tunnel there, there was a considerable amount of fraud committed by the contractors which was not found out for some time, was it not?

A. There was, just before and during the time that I was there.

Q. Before and during the time?

A. Yes.

Q. You were superintendent of that particular work and did not discover it for some time?

A. I didn't discover it for some time. I did discover it.

Q. That was where there was some false work put in the tunnel?

A. No, it was not false work. Left it vacant behind.

Q. Mr. Lydecker was afterwards court martialed about it?

A. He was.

Q. On account of the responsibility, he being the chief engineer?

A. Yes, sir."

It is not contended that Major Townsend was guilty of participating in that fraud. It is contended that the acts of a man who was as unsuspecting as he, who could allow hollow walls to be built in an aqueduct which was being constructed under his personal supervision, are not to be set up as a criterion of what is proper.

C. McD. Townsend testified on the direct examination (Shields Vol. 3), p. 1825, as follows:

"Q. Have you advertised less than 30 days?

A. A great many times."

He further testified, p. 1825: That it was his habit in preparing advertisements where he intended to advertise full 30 days to send on the form to Washington with the date of opening left blank. That if he intended to advertise for less than 30 days he filled in the dates.

Before the Court Martial in 1898, he testified (Court Martial Record Vol. 13), p. 2875, that the largest contract he had ever advertised was "about $80,000."

Before the Commissioner in 1900 (Shields Vol. 3), p. 1830, he said $130,000. But he never did state whether the contracts he advertised for less than 30 days were small emergency contracts or not.

F. A. Mahan, Major, Corps Engrs., stationed at Montgom-

ery, Ala., called as a witness for defense in the court martial trial, testified (Court Martial Record Vol. 14), pp. 3071 and 3072:

"Q. I will ask you if it has been your habit or practice in the letting of contracts for Government work to advertise in every instance 30 days before the opening of bids?

A. Not in every instance; I have had advertisements out for 15 days; and some for 20 days; about 5 or 6 months ago I had an advertisement out for 20 days *by orders from Washington.*"

Page 3090:

"I have advertised all the way from 15 to 60 days, according to circumstances.

Q. Under what circumstances would you advertise 60 days?

A. When I have exceedingly important and unusual piece of work."

Page 3091:

"I do not find in my experience at least, that competition is excited very much by much advertisement. I find that I reach more people than I hear from, by sending specifications direct. I do not see that the advertisements do my work any good at all, and never have.

Q. You have kept a list of possible bidders—I so understand you?

A. I found a list of possible bidders in my office when I took charge, and I have added to it from time to time.

Q. When it comes within your knowledge that parties are engaged in the business, that they might perhaps, make a bid on the work that you have, you send them information?

A. Yes, sir."

Page 3091:

"If advertisements are required by law, and you do not take much stock in them you think your method of administration is the better one to reach possible bidders?

A. I think my method is very much better;—*I comply with the law,* and issue advertisements and issue them very widely.

Q. In complying with the law, and when you can, you advertise for 30 days?

A. I do not always advertise 30 days; depending much on the time which I have before me, and the class of the work as to whether it is liable—well, there are a number of conditions which regulate my time."

What was the size of contract, or circumstances under which he advertised less than 30 days, he does not state.

It will be noted here that Mahan's method of keeping a list of possible bidders and voluntarily sending out specifications to them without waiting for applications to be made in response to advertisement was a method practiced by almost every member of the Corps of Engineers who testified, except Carter, he kept no such list.

He further testified, p. 3093, that it was his practice to send on the "form" of advertisement to Washington, with its date left blank, and that he filled in the date after he received authority.

"Q. You put in the date of advertisement after you receive authority?

A. After I receive authority to publish it."

This bears out the testimony (*ante*, p. 130) of the Chief Clerk of the War Department, Tweedale, that in the approval of the "form" of advertisement, the dates filled in by the local officer is not considered, and that the approval of the "form" is not an approval of the length of time of advertisement.

Joseph Willard, Major, Corps of Engineers, stationed at Vicksburg, Miss., called as a witness for defense before the Court Martial, testified (Court Martial Record Vol. 14), p. 3122:

"Q. In advertising proposals, have you always given 30 days from the first insertion of the advertisement up to the opening of the bids?

A. That has been my desire to do so. I cannot recall in any case that I have ever given 30 days. I cannot recall a case; but it is my desire and wish, if possible, to give 30 days—reasonable time.

Q. Have you given as little as 20 days' time?

A. I have given 15 days on considerable work; not of my own volition, however, accident. I have done work under contract without any advertisement at all, under formal contracts."

What Major Willard meant by "formal contracts," and the conditions under which such contracts not involving expenditure of over $3,000 are let, is stated in Army Regulations of 1889, Sections 651 and 670. Even to make a contract for that amount and of that character, the regulations required that it should have the approval of the Chief of the Bureau to which the purchase pertains. What the size of the contracts or the circumstances were when he advertised for less than 30 days, the witness never stated.

He testified, p. 3122:

"Work that can be specified very particularly, and requires a large amount of examination of detailed drawings, like lock construction, I think they ought to have 30 days. I don't think it advisable to give them much more than 30 days."

Now consider what Carter told applicants for specifications for the $2,350,000 1896 contract at Cumberland Sound. That they had to build a great trestle from the mainland out to sea for carrying and dumping rock (*Post*, pp. 216-222), and the discussion with Rutherford as to the feasibility and necessity of building a railroad across Cumberland Sound. (*Post*, p. 229.)

Page 3122, Willard testified:

"All great contractors know what is going on before the Engineers do.

Q. And that really the length of the advertisement is of no particular value as to such contractors?

A. No, sir; in all of my work, I know that nearly all of the large contractors know what is going to be done before I do, in general terms."

But was Major Willard's opinion in this respect sound?

Why did Congress pass the Act of Aug. 11, 1888, requiring that hereafter there should be sufficient public advertisement for proposal for river and harbor contracts? Why did the Army Regulations of 1889 and 1895 require that in general contacts should be advertised 30 days, and large contracts 30 days or more?

The answer is found in the following among other evidence in the cause.

The big $3,150,000 contract of 1892 for Savannah Harbor was first advertised in the local paper July 27, 1892, bids to be opened Aug. 20, 1892, and first appeared in the engineering journals July 30th, only 21 days before the opening (Court Martial Record Vol. 3), pp. 575-6-7.

Henry K. Gustin of Oscoda, Michigan, applied to Carter for specifications on Aug. 7, 1892. On Aug. 11, 1892, although it was only 9 days before the opening of bids, Carter sent him only one copy of the specifications with the request to return it if he did not intend to bid, although he knew it required three copies to make a bid, and inviting Gustin to come down and look over the work. (Court Martial Record Vol. 3) p. 578, and Letters Press Book Savannah Harbor, p. 405.

Gustin's reply was as follows:

"Henry K. Gustin,
Contractor.
Offices 1101 Unity Building, Chicago, Ill.
Oscoda, Mich., Aug. 16, 1892.

Capt O. M. Carter,
Savannah, Ga.

Dear Sir:

Enclosed find specifications returned as requested.

Yours truly,
H. K. Gustin.

Not rec'd in time to figure on same."

(Savannah Harbor File 49, 1892) and (Court Martial Record) p. 576.

McGee, Kohman & Co., of Kansas City, Mo., also applied for specifications Aug. 8, 1892. On Aug. 12, 1892 (Court Martial Record Vol. 3), p. 578, and (Letter Press Book Savannah Harbor), p. 407, although it was only 8 days before bids were to be opened, Carter sent him only one copy of the specifications, with request to return it if he did not intend to bid, and inviting them to come down and look over the work. How much time did they have to make the trip in, ascertain the local conditions, fix up their bids, and get a $375,000 guarantor and a $1,000,000 bond?

Is it a wonder that their reply was as follows:

"KANSAS CITY, Mo., Aug. 17, 1892.

O. M. Carter, Esq.,
Capt. Corps of Engrs. U. S. A.,
Savannah, Ga.

In reply to your favor of the 12th inst., and as per your request contained in same, we inclose you specifications kindly sent us.

We regret exceedingly *having overlooked* this work, as upon careful investigation we find it impossible, owing to the shortness of time, to submit our bid for doing this work.

Please accept our best thanks for your promptness in forwarding the information sought.

We remain,

Very respectfully,
McGEE, KOHMAN & Co."

Savannah Harbor files 48, 1892.

These gentlemen saw that Carter's advertisement was dated July 18th (Court Martial Record Vol. 3), p. 579, and as they expressed it, that they had "overlooked it."

What would they have concluded, if they had known that the first advertisement in the engineering papers had only appeared on July 30th, as we have seen?

Now, as we have already seen (*ante* pp. 139-140), the then running advertisement of the 1892 contract, bids to be opened Aug. 20th, was declared off, and a re-advertisement ordered

Aug. 18th, and Carter re-advertised for bids to be opened Sept. 17th, 1892, and only ran the advertisement 23 days in the Engineering Journals before opening bids.

Now the persons to whom Carter sent specifications under this last advertisement appear in the list. Exhibit 161 Shields, and the names of these two possible bidders who had stated that they were cut off from the first bidding advertised by reason of shortness of time, do not appear in that list.

It shows that Carter was not trying to reach bidders; he took the chances of their not seeing the 23 day advertisement, and sent a copy of the specifications only to those who actually applied again under the re-advertisement.

Again.

Carter had advertised Contract No. 4037 for Brunswick Harbor, $12,000; contract to be opened May 13, 1889, (See Book of Contracts, p. 137). This contract was only advertised less than 14 days. (Court Martial Record Vol. 5) pp. 1061-2.

On May 11, 1889, just two days prior to the opening of bids, D. V. Howell, of Monroe, N. Y., sent Carter the following letter, (Court Martial Record Vol. 5), p. 1062.

"MONROE, N. Y., May 11, 1889.

Col. O. M. Carter,

DEAR SIR:

I received your proposals last evening through John S. Howell, *too late* for me to make the papers out with proper securities, and for this reason I have concluded to send you the inclosed informal bid. Should I come out the lowest, I will at once give you good security for the amount required on the contract, and do the work as fast as you expect it to be done.

Very truly,

Yours, D. V. HOWELL."

There were but two bidders for that contract: C. C. Ely at $1.34 per cubic yard for mattresses and D. V. Howell, at 67 cents per cubic yard, and Carter recommended the rejection of Howell's bid for informalities, and because he alleged

Howell had previously failed to execute a contract in the district. (Court Martial Record Vol. 5) p. 1061.

The only contract D. V. Howell had in the Savannah District, was in 1879-1880, for Savannah Harbor. It appears that there was some delay in the contractors commencing work, which was satisfactorily explained, and that "an extension of time in which to complete the work was granted him," and that "the work was completed in November, 1880." (Court Martial Record Vol. 14) p. 3235.

However that may be, the fact is affirmatively brought home to Carter, that bidders were prevented from putting in bids in due form by insufficient advertisement.

Wm. L. Marshall, Major, Corps of Engineers, stationed at Chicago, Ill., called before the Court Martial for the defense, testified (Court Martial Record Vol. 15), p. 3268:

> "I keep in my office a roster of all the contractors who have hitherto made bids on my works of different character, and also a roster of contracting firms who have applied to me for specifications as prospective bidders, and as soon as *specifications are issued,* I wait for no further application, but immediately send a full set out to every one on the roster. Afterward, when an applicant makes application for specifications, I send one copy with the information that they can get others at my office."

We note again that here was a method of insuring competition not practiced by Carter.

Page 3275:

> "Generally I advertise for 30 days. In some cases, I don't remember the dates, I have advertised for 15 days. It depends entirely upon the character of the work, and the demand for it."

Page 3278:

He testified he did not think the amount of the expenditure

would control him as to fixing the length of advertisement. But the Army Regulations expressly provide (*ante*, p. 123) that large contracts should be advertised 30 days or more.

Page 3280, he testified:

> "I always attempt to give a full notice. I don't know what I would do in any particular case. Unless I knew all the circumstances connected with the case I would not like to testify."

General Wm. P. Craighill, retired Chief of Engineers, called as a witness for defense testified on the direct (Court Martial Vol. 16), p. 3594:

> "Q. Have you ever advertised less than 30 days?
>
> A. I have, not as Chief of Engineers, however. It ought to be explained to the court that while I was division engineer, I was also district engineer, had a large district.
>
> Q. And as such you made advertisements less than 30 days?
>
> A. Just like any other district engineer."

Page 3608.

> "My impression is, my recollection is, that when I proposed to advertise for less than 30 days, that I always notified my superiors in Washington, and explained the conditions under which I proposed to do that. I didn't ask permission, but I have notified them. There is a difference in the two things, of course; so that they would understand the situation, and approve or disapprove, as they thought proper."

Although as we have already seen, not a single one of Carter's river and harbor contracts from 1890 to 1897 were advertised 30 days (*ante*, p. 125), it is remarkable that he never once called the fact to the attention of the Chief of Engineers by letter, such as General Craighill testified was appropriate.

Nevertheless, Carter was not ignorant of what was appropriate. When he came to let a contract for building a wharf

at Tybee Island as an approach to a fort, and he wished to advertise for less than 30 days, he wrote the Chief of Engineers as follows (Court Martial Record Vol. 8), p. 1728:

"SAVANNAH, GA., Nov. 24, 1896.

Brig. Gen. Wm. P. Craighill,
Chief of Engineers U. S. Army,
Washington, D. C. etc.

GENERAL:

The Venable Construction Company, to whom the contract for building a battery on Tybee Island has been awarded, desire to begin work at once.

The delays have been so great that an advertisement of 30 days and the construction of a wharf of the character contemplated in my specifications of the 30th ultimo, will retard the work on the battery.

I respectfully suggest therefore, that I be authorized to call for proposals for construction of wharf and railway by circular letter and ten days notice, and to modify the wharf so as to omit all bracing, the general character of the structure to be shown as on the tracing herewith.

To save time and expense, it is proposed further to extend the wharf only to a depth of 15 feet at mean low water.

Please wire authority herein requested.

Very respectfully,
Your Obedient Servant,
O. M. CARTER,
Capt. Corps of Eng. U. S. A."

Carter claims however, that by his putting in the "form" of advertisement sent to Washington for approval, the date of the advertisement date of opening bids, that an approval of the specifications by the Chief of Engineers, which specifications had a copy of the form of advertisement as prepared by Carter, was in effect an approval by the Chief of Engineers, of the date of opening the bids.

General Craighill, however, testified (Court Martial Record Vol. 16), p. 3609:

"Q. While you were Chief of Engineers, did you make the date, the apparent date, if it was inserted in the advertisement, a factor in your judgment?

A. I cannot recollect anything of that sort. There were too many. Those things were coming to the office by the peck; and it was impossible for my attention to be drawn to any particular case.

Q. As a matter of inserting dates, to whom was that left for determination?

A. I can't say, I have forgotten, really; it occurs to me, however, that it was something that was arranged in the office of the Chief Clerk of the War Department. It seems to me that applications to print advertisements—that is my recollection, I may be entirely mistaken—that they went to the Chief Clerk of the War Department.

Q. Upon whom does the responsibility for advertising 30 days rest; upon the advertising officer?

A. I should think so. It depends upon circumstances. As I said to you before, I always notified my superior officers in Washington, whoever they might be, the Chief of Engineers or the War Department, acting through the Chief Clerk, of my intention to do that thing and the reasons for it."

In conclusion on this subject of shortness of advertisement, the Government does not contend that there is any rigid requirement of law requiring that every River and Harbor contract shall be advertised for 30 days or more, but we do contend that the fixing of the length of time was a discretion vested in the local officer, and that not a loose discretion, but a legal discretion to be exercised on the principles fixed in the Army Regulations. That Carter continually in the advertising of every contract from 1891 to 1897 and persistently exercised that discretion in a way that necessarily resulted in suppressing competition and in favor of Greene & Gaynor, who were on the ground.

That he did it in such a way as not to attract the attention of authorities at Washington or outside bidders to the fact of the inadequacy of advertisement and that his conduct in this particular, taken in connection with other acts, which will be referred to, shows that it was done with corrupt motives.

Suppression of Competition by Withholding Specifications.

The evidence shows that for some reason satisfactory to himself, Carter kept a most rigid account of every specification sent out to applicants, who desired to bid on any contract. Not only filing the application when submitted in writing, but keeping letterpress copies of the number of applications sent out and even refusing to deliver specificatioins to applying persons representing undiscovered principals. See testimony of Sterley (Shields Vol. 1), pp. 426, 427, 428, 429.

Moreover, when an application was made for specifications even by a known contractor, although the time might be short before date of opening bids and Carter knew it required three copies of specifications to put in a bid, he would send only one copy of the specifications, telling the applicant that if he intended to bid he could apply again for the two copies, and to return the one copy sent if he determined not to bid—thus forcing the applicant to disclose to Carter in advance a knowledge of every applicant who might have given up the idea of bidding, because the failure to apply for the additional two copies or the return of the one copy, would show that that applicant was out of the race.

By this means, Carter put himself in full knowledge in advance as far as possible, of the particular contractors from whom competition was to be expected. The evidence also shows that Greene and Gaynor in some way became possessed of that information prior to the bidding.

P. 157. Note

*Capt. Mahan, witness for defense, testified that the method adopted by Carter (above stated) would put the Engineer's Office in possession of knowledge of who would probably be the bidders. (Vol. 6, p. 3086.)

1892 CONTRACT, SAVANNAH HARBOR.

Vol. 31 Exhibit 162 (Shields) is a list of applicants for specifications for the big $3,150,000 contracts for Savannah Harbor, to be opened Sept. 17, 1892, advertised in the local papers only 25 days and in the Engineering Journals only 23 days, and of the dates when specifications were sent and number of copies sent, with the references to the original correspondence offered in evidence from which the table is compiled. From this exhibit and letters referred to are taken the following as an illustration:

(Savannah Harbor Files 58—1892.)

"PHILADELPHIA, Aug. 26, 1892.

O. M. Carter,
Capt. of Engineers, U. S. A.,
Savannah, Ga.

SIR:

Will you please be kind enough to send us specifications and forms of proposals for improving Harbor at Savannah, Ga., as per your advertisement of August 17/92 and oblige

Respectfully,
AMERICAN DREDGING COMPANY,
L. Y. SCHERMERHORN,
President."

It will be remembered that this company afterwards was a bidder on this contract both for the dredging and for the jetty work.

Carter replied to this letter as follows (Savannah Harbor Letter Press Book No. 1), p. 454:

"SAVANNAH, GA., Aug. 29, 1892.

American Dredging Co.,
234 Walnut Street,
Philadelphia, Pa.

SIRS:

In compliance with request contained in your letter of the 26th instant, *one* copy of the specifications for improv-

ing the harbor at Savannah, Georgia, is sent you herewith.

Please consider the specifications carefully and if you decide to bid upon the work, I shall take pleasure in showing you over the same, giving you all the available information concerning it and furnishing you with the two remaining copies of the specifications necessary to enable you to submit your bid. If you do not intend to bid, please return the enclosed specifications.

Very respectfully,
Your Obedient servant,
O. M. CARTER,
Capt. Corps of Engrs. U. S. A."

This was only 19 days before the time for opening bids. (Savannah Harbor Files 70—1892.)

"PHILADELPHIA, Sept. 7, 1892.

O. M. Carter,
Captain of Engineers, U. S. A.,
Savannah, Ga.

SIR:

Will you please be kind enough to send us the remaining 2 specifications and forms of proposals, necessary to enable us to bid on the work for improving Savannah Harbor, Ga., above Augusta, proposals for which are to be opened September 17th inst. and oblige.

AMERICAN DREDGING COMPANY,
L. Y. SCHERMERHORN,
President.

What would be the amount of the bond on the bid for dredging alone?

A. D. Co."

On Sept. 9, 1892, Carter sends the two additional copies of the specificatioins and tells him the bond for dredging alone would be $500,000. Exhibit 162 (Shields, and Savannah Harbor Letter Press Book No. 1), p. 477.

This letter would scarcely have reached Schermerhorn before Sept. 11th, and this left him but six days within which to visit Georgia, and determine the local conditions, the possible supply of material, determine whether he would be a bidder, and to arrange for a $375,000 guaranty of the bid, and

have it executed for filing in Savannah before the opening of bids.

In spite of this fact, as we have already seen by committing the irregularity of having his guarantee executed in blank (*post*, p. 198) and by basing his estimate of jetty work on past current prices (*post*. p. 195) Schermerhorn got to Savannah two days before the opening of bids and put in an unsuccessful bid. That his bid for jetty work was not really a competitive bid will be seen. (*Post*, p. 192.)

Sends Wrong Paper.

On Sept. 1, 1892, the National Dredging Co., of Wilmington, Delaware, wrote Carter for specifications. Exhibit 162 (Shields). On Sept. 3, 1892, Carter *writes* that he incloses one copy, his letter being in same form as that to Schermerhorn of Aug. 29, 1892 (*ante*, p. 158). But he "accidentally" sends something else, so that this company has to write again as follows (Savannah Harbor Files 65—1892):

"National Dredging Co.
Contractors for River and Harbor Improvements.
WILMINGTON, DEL. Sept. 5, 1892.

Capt. O. M. Carter,
Corps of Engineers, U. S. A.
Savannah, Ga.

SIR:

We beg to acknowledge the receipt of your favor of the 3rd inst., enclosing Personal Report of Ord. Sergt. in place of specifications for improving the harbor at Savannah, Ga.

We *fully intend to bid* on this work, and *trust* that *you will forward specifications in triplicate*, so that we can have our sureties justify, as one of them intends taking a trip.

Very respectfully,
NATIONAL DREDGING CO.,
WM. H. CHURCHMAN,
Secretary."

The three copies of specifications were then forwarded by Carter on Sept. 7, 1892. Exhibit 162 (Shields) and Savannah Harbor Letter Press Book No. 1, p. 472, in a letter in which Carter says the failure to send copy of specifications in his letter of Sept. 3, was "through a mistake in this office." This letter could scarcely have reached Wilmington, Delaware, before Sept. 9th, which left the proposed bidder only 8 days within which to determine whether to bid, and make all the preliminary arrangements. The result was (*post*, pp. 188-9) that this company only bid on the dredging, which being all within the Savannah river, required little investigation of local conditions, and even as to that it was an unsuccessful bidder.

On Aug. 18, 1892, which is the same date that Carter was instructed by telegraph from Washington to re-advertise the big contract of 1892 (*ante*, p. 140), application was made by the Virginia Dredging Co., of Richmond, Va., for "forms of proposals and specifications for stone, mattress, fascine and pile work, Savannah Harbor, as advertised in 'Engineering News,' and 'American Railway Journal.'"

This application was received in Carter's office Aug. 20, 1892. On that day Carter was in Washington, and the application was replied to by Lieutenant Rees, in Carter's absence as follows:

"SAVANNAH, GA. Aug. 20, 1892.

Virginia Dredging Co.,
Richmond, Va.

SIRS:

In answer to your letter of the 18th inst., requesting specifications for improving Savannah Harbor, I have to inform you that the opening of the bids has been postponed until some future day not yet announced.

By direction and during the absence of Capt. Carter.

Very respectfully, etc.

THOS. H. REES,
1st Lieut. Corps of Engrs. U. S. A."

The authority to re-advertise was granted on August 20th (Court Martial Record Vol. 3), p. 616, and appeared in the local papers Aug. 22, 1892. (Court Martial Record Vol. 3) p. 583, and Carter was back in Savannah on Aug. 26th, as appears from his letterpress books in evidence. Yet no copy of the specifications were ever sent to the Virginia Dredging Company, who had expressly asked for specifications for mattress work and stone.

Mailing Specifications to Wrong Place.

On Aug. 10, 1892, Carter writes the San Francisco Bridge Co., Engineers and Contractors, whose letter heads state their office to be in the "World Building, New York, N. Y.", a letter as follows (Savannah Harbor Letter Press Book, p. 398):

> "*San Francisco Bridge Co.,*
> *World Building,*
> *New York, N. Y.*
>
> SIRS:
>
> Replying to your letter of the 5th instant, I beg leave to state that I shall soon advertise for proposals for doing about 7,500,000 cubic yards of dredging in this harbor. I shall take pleasure in furnishing you with a copy of the specifications when they are printed.
>
> Very respectfully,
> Your obedient servant,
> O. M. CARTER,
> *Capt. Corps of Engrs. U. S. A.*"

On Aug. 17, 1892, the San Francisco Bridge Company writes from their office in *New York*, to Carter (Sav. Harbor Files 52, 1892), saying:

> "Wish you would kindly send us copy of specifications when ready, for work in your charge."

Another letter to Carter dated Aug. 22, 1892, from the same New York office, follows making certain inquiries about the

method of measuring dredging (Savannah Harbor Files 56, 1892).

Carter replies to these letters on Aug. 26, 1892, to the New York office (Savannah Harbor Letter Press Book No. 1, p. 445).

On Aug. 29, 1892 (Savannah Harbor Letter Press Book No. 1, p. 458), Carter sends three copies of specifications to

"*San Francisco Bridge Co.,*
42 Market Street,
San Francisco, Cal."

And on the same day he writes the *New York* office (Letter Press Book No. 1, p. 459):

> "In compliance with your request, I send you herewith one copy of the specifications for the improvement of Savannah Harbor, Ga. A complete set has been sent to San Francisco, as requested by you."

The remarkable feature is that the request was made from New York to send the specifications to them at New York.

These three copies sent to California only 19 days before the opening of bids, were of course, useless.

The one copy sent to New York was useless, and if the company had written for two more, by the time they got them the period for preparation would have been so short that it is not a wonder these proposed bidders were not heard from again.

Withholding full sets of specifications made the time too short and caused bidders to abandon the purpose of bidding. (See *ante*, pp. 150-1-2, and *post*, pp. 169, 170.)

Exhibit 162 (Shields) shows that there were twelve applications in different parts of the country for specifications for the Sept. 17, 1892, opening, who were sent only one copy of the specifications, and who were treated to the same kind

of letter as that of Aug. 29, 1892, sent by Carter to Schermerhorn, in which he called upon them to make known to him their intention of being bidders before he would send the requisite copies for bidding.

Among these were men known to Carter to be regularly engaged in river and harbor work, such as R. G. Ross, of Jacksonville, Fla.

The only applicants by letter who got three copies when first applied for, were B. G. Bailey, of Philadelphia, Pa., J. V. Hoag, Jr., of Frankfort, Ky., Jacob Friday, of Charleston, S. C., and Rittenhouse Moore, Tallulah Falls, Ga., each of whom demanded that full sets of three be sent them in the first instance. (See their applications, Savannah Harbor Files 73, 74, 76 and 77, 1892.)

And little apprehension need have been entertained that they would bid on the jetty work, as Bailey's set were not sent to Philadelphia until seven days before the opening; Hoag's until five days; Moore's seven days, and Friday's until three days before the opening.

Besides that, Friday had already written Carter under the advertisement for opening Aug. 20th that had been recalled, indicating his intention not to be a bidder on the work, by returning, Aug. 8, 1892, the one copy of specifications Carter had previously sent him. (See Savannah Harbor Files 26, 1892.) And he was not a bidder.

The only persons (Exhibit 162 Shields) who got the necessary three copies of specifications for the Sept. 17, 1892, opening on oral application, were John F. Gaynor, C. C. Ely for P. S. Ross, Jacob Paulsen and R. S. Burnett.

We have dealt with the relations existing between Gaynor, Ely, Ross and Paulsen. (*Post*, pp. 180, 192.) R. S. Burnett was a former employe of Carter. (Board of Officers Record Vol. 1), p. 343. It was therefore easy for Carter under his method to lay his finger on every person who would be a possible bidder, and to narrow this list to a very few persons.

WITHHOLDING SPECIFICATIONS, 1892 CONTRACT, CUMBERLAND SOUND.

The bids for $170,000 Contract No. 4820, Cumberland Sound, were advertised to be opened Sept. 10, 1892. The length of time advertised in the Engineering Journals was only 21 days, Exhibit 161 (Shields). There were nine written applications to Carter for specifications. Exhibit 163 (Shields). Vol 31

In every case Carter sent in reply but one copy of the specifications, with a letter similar to that written to Schermerhorn Aug. 29, 1892 (*ante*, p. 158), telling the applicants that if they intended to bid he would send them the two additional copies. See Exhibit 163 and letters therein referred to in letter press book. Vol 31

Of these nine, only one person applied for the two additional copies, viz., B. G. Bailey, of Philadelphia, and these were sent Sept. 5th, arriving in Philadelphia about Sept. 7th, only three days prior to the opening of bids or two days exclusive of the day of opening.

It was therefore known by Carter before the opening that there would be no competition from any of the applicants by letter, with the possible exception of Bailey, who did not have time to examine the local situation, and as he did not appear on the day of opening, he was practically known to be out of the race before the bidding.

Of the oral applications to which written response was recorded, there was only one, Jacob Paulsen, to whom three copies were given.

Paulsen's relation to Greene & Gaynor and P. Sanford Ross and Ely, is referred to (*post*, pp. 180 to 192).

The bidders were:

Chas. C. Ely.
W. H. Walsh.
Ed. H. Gaynor.

W. H. Walsh and Ed. H. Gaynor were each acting for Greene & Gaynor (*post*, pp. 185).

Chas. C. Ely was P. Sanford Ross' manager, and that there was an understanding between him and Greene & Gaynor, that Ross was to get the contracts for dredging and Greene & Gaynor the jetty work, is clearly shown by the evidence (*post*, pp. 180 to 192).

The remarkable feature about the giving out by Carter of these specifications, is that he kept no office record of any specification given out to either Ely, Walsh or Gaynor, who were the only bidders.

Ed. H. Gaynor got the contract.

WITHHOLDING SPECIFICATIONS, 1894 CONTRACT, CUMBERLAND SOUND.

Bids for $170,000 Contract No. 5811, Cumberland Sound, were advertised for only 16 days in the Engineering Journals, to be opened on Sept. 29, 1894. Exhibit 161 (Shields) and Exhibit 164 (Shields) shows that of the 13 applicants by letter for specifications, nine of them were only sent one copy of the specifications with a letter, similar to the letter of Aug. 29, 1892, from Carter to Schermerhorn (*ante*, p. 158), calling upon the applicant to state whether he intended to be a bidder before the additional copies would be sent.

Of the nine persons to whom one copy was sent, only one, J. W. Grantham, of Savannah, Ga., asked for the additional two copies.

The four persons who were given three full copies were:
R. G. Ross, of Jacksonville, Fla.
P. E. Burgyn (Virginia Dredging Co.), Richmond, Va.
Rittenhouse Moore, Mobile, Ala.
Cordes & Bachman, Charleston, S. C.

The difficulty which R. G. Ross encountered in getting his

three copies, is shown by the evidence. (*Post*, p. 206.) Rittenhouse Moore's three copies were sent him Sept. 25th, only four days before the opening of bids, so that if he bid at all, he would not have had time to overlook the ground and could only have bid "current prices," without exact knowledge. He was, however, an unsuccessful bidder. Burgyn did not appear on the day of bidding at all. This left of the persons to whom Carter had given out a full set of specifications as recorded, only:

R. G. Ross, Jacksonville, Fla.
Rittenhouse Moore, Mobile, Ala.
Cordes & Bachman, Charleston, S. C.
J. W. Grantham, Savannah, Ga.

who had a sufficient number of specifications to put in bids. The bidders were:

R. G. Ross & Co.
Rittenhouse Moore (a dredging contractor).
Anson M. Bangs.

As shown (*post*, pp. 205 to 214) Bangs' bid was a Greene & Gaynor bid and the proposal of Bangs was really written out and signed in Bangs' name by M. A. Connolly, Carter's confidential clerk. (*Post*, p. 210.)

That the R. G. Ross bid was the only real competitive bid, and that the Gaynors knew it, is conclusively shown by the evidence. (*Post*, pp. 205-9.)

The failure of the Gaynors' efforts to buy off Agnew, at the last minute, and the withdrawal by the Gaynors at the last minute of one bid and putting in of another, resulted in the fall of the prices of brush mattress to one-half of what it had been before, and what they became afterwards. (*Post*, p. 209.)

WITHHOLDING SPECIFICATIONS, 1896 CONTRACTS, CUMBERLAND SOUND.

The proposals for the $2,350,000 contract, No. 6517, for Cumberland Sound, were advertised in the Engineering Journals, Exhibit 161 (Shields), for only 19 days; bids to be opened Sept. 8, 1896. Exhibit 166 (Shields) shows that of the 25 applicants for specifications, 14 applicants were sent only one copy of the specifications, and Carter would send the one copy in a letter, stating that if they would notify him of their intention to bid after considering the one copy, he would send the other two copies necessary to put in a bid. This kind of letter was sent out even though the delay occasioned by it would cut the applicant off from bidding. An illustration is shown by the following correspondence in the record. (See Court Martial Record Vol. 3) pp. 493-4.

"Jutte & Foley Co., Contractors for Heavy Masonry, Deep Foundations, Tunnelling Rock and Earth Work, Pile Driving and Timber Work. Street Railway Building. Office Old No. 247, Old No. 102 Water Street.

PITTSBURGH, PA., Aug. 21, 1896.

O. M. Carter, Captain of Engineers,
U. S. Engineers Office,
Savannah, Ga.

DEAR SIR:

Please send us specifications for the jetty work at Cumberland Sound, Ga. to be let 8th Sept. 1896.

Very respectfully yours,

JUTTE & FOLEY CO.,
W. C. JUTTE,
Prest."

"SAVANNAH, GA., Aug. 24, 1896.

Mr. W. C. Jutte,
President Jutte & Foley Co.,
Pittsburgh, Pa.

DEAR SIR:

In compliance with your request of 21st inst., I herewith transmit one copy of specifications for constructing jetties at entrance of Cumberland Sound, Georgia.

If after reading these specifications you intend to bid

upon the work, please inform me and I shall send you two other copies of same.

Very respectfully yours,

O. M. CARTER,
Corps. of Engs. U. S. A."

Now when this one copy was sent, it lacked only 15 days to time of opening bids, for this contract which J. W. Rutherford, a witness for defense, testified he regarded as a "great stone contract" (*post*, p. 228), and which Carter told other proposed bidders (*post*, pp. 216-222-229) required the building of a great trestle out to sea, and about which he discussed with Rutherford the necessity and feasibility of building of a railroad across Cumberland Sound in order to convey the rock to the shore end of the trestle.

The reply of Jutte & Foley Co. was as follows (Court Martial Record Vol. 3), pp. 494-5:

"PITTSBURGH, PA., Aug. 26, 1896.

Capt. O. M. Carter,
U. S. Engineers Office,
Savannah, Ga.

DEAR SIR:

One copy of specifications for constructing jetties at the entrance to Cumberland Sound, Ga., duly received and contents noted. *We expect to bid on this work*, and would be pleased to have you *mail us two additional copies*, and oblige.

Yours respectfully,

JUTTE & FOLEY CO.,
C. CRAMER,
Sec."

On Aug. 31, 1896 (Court Martial Record Vol. 3), p. 495. Carter then sends the two additional copies. These could scarcely have reached Pittsburgh before Sept. 2nd, and this left only 5 days exclusive of the day of opening bids, within which the proposed bidder had to fix up his guarantees, determine the local sources of rock supply in the neighborhood of the work, freight rates, etc., necessary to know before he could make an intelligent bid. It is not surprising that they

should have abandoned the intention of bidding and written as follows (Court Martial Record Vol. 3), p. 495:

"PITTSBURG, PA., Sept. 2, 1896.

Capt. O. M. Carter,
U. S. Engineers Office,
Savannah, Ga.

DEAR SIR:

We return you herewith the blank advertisement on the jetties at Cumberland Sound, Ga. including the extra copies you sent us. We have reconsidered the matter of bidding and do not intend to bid now.

Thanking you for your kindness, we remain,

Yours respectfully,

THE JUTTE & FOLEY CO.
C. CRAMER,
Sec."

The return of these copies by the Jutte & Foley Co., and the failure of the other 14 applicants to whom Carter sent only one copy and that too close to the time of opening of bids to apply for additional copies, eliminated prior to the bidding every one of these 14 applicants from consideration as possible bidders, and that knowledge was in Carter's hands by reason of the method adopted prior to the bidding. And (*post*, p. 218) Greene & Gaynor became in some way possessed of that knowledge before the bidding.

Exhibit 166 (Shields) shows, however, that there were 12 applicants for specifications for that contract, who made written applications, who were given a full set of three specifications. They were:

	Days sent by mail before date of opening.
Rittenhouse Moore, Tallulah Falls, Ga	13
J. W. Rutherford, Bedford, Pa	12
Gulf Towing Co., Sabine Pass, Texas	10
Sanford & Brooks, Baltimore, Md	8
American Dredging Co., Philadelphia, Pa	5
A. J. Twiggs, Augusta, Ga	4
*John L. Grim, Philadelphia, Pa	8
International Contracting Co., Albany, N. Y	13
R. G. Ross, Jacksonville, Fla	15
*Jacob Friday, Pittsburgh, Pa	15
C. P. E. Burgwyn (Va. Dredging Co.), Richmond, Va	15
C. C. Ely, for P. S. Ross	15
Those to whom three copies of specifications were given on oral application were:	
**E. H. Gaynor, at Savannah	15
Savannah Dredging Co	13
W. H. Venable, Savannah, Ga	4

*Bidders.
**Successful bidder.

The difficulties encountered by W. H. Venable in getting his three copies is shown by the following evidence:

W. H. Venable, a large contractor, and with his brother, the owner of large granite quarries at Stone Mountain, near Atlanta, Ga., came down to Savannah for the purpose of bidding on the contract or selling his stone to others contemplating bidding. (*Post*, p. 215.) Venable was anxious to get hold of three copies of the specifications for preparing his bids without disclosing his identity to Carter or to the other proposed bidders.

Venable went to the office of Barrow & Osborne, prominent Attorneys in Savannah, and requested Mr. Wm. W. Osborne to write to Carter for the specifications, which he did. (Tes-

timony of Osborne (Court Martial Record Vol. 3), p. 664-5.

The following correspondence took place (Shields Vol. 1), p. 196:

"SAVANNAH, GA., Sept. 1, 1896.

Capt. O. M. Carter,
Savannah, Ga.

DEAR SIR:

We have a client who asks us to get from you immediately copies of specifications for jetty work for Savannah Harbor and Cumberland Harbor. *We would like these specifications at once.*

Very truly,
BARROW & OSBORNE."

Carter demands name of the *client* (Shields Vol. 1), p. 198:

"SAVANNAH, GA., Sept. 4, 1896.

Messrs. Barrow & Osborne,
Savannah, Ga.

DEAR SIRS:

Replying to your inquiry of the 4th instant, please send me the name and address of the parties desiring specifications.

Very respectfully yours,
O. M. CARTER,
Capt. Corps Engrs. U. S. A."

(Shields Vol. 1) p. 198, and (Court Martial Record Vol. 3) p. 666:

"SAVANNAH, GA., Sept. 4, 1896.

Capt. O. M. Carter,
Savannah, Ga.

The name of the party desiring the specifications for harbor work is R. A. Johnson, Augusta, Ga.

Respectfully,
BARROW & OSBORNE."

It appears that there was no such person as R. A. Johnson, but that Venable gave the name to Osborne without telling him that fact, to keep from disclosing his identity. (Court Martial Record Vol. 3) p. 670.

Now although there was but three days left before the day of opening bids, Carter does not deliver the three copies necessary to put in a bid to Barrow & Osborne, who had requested the delivery of the copies to them, but he sends one copy by mail to R. A. Johnson, Augusta, Ga., and writes as follows: Exhibit 166 (Shields) and Cumberland Sound Letter Press Book No. 2, p. 84:

"SAVANNAH, GA., Sept. 4, 1896.

Mr. R. A. Johnson,
Augusta, Georgia.

DEAR SIR:

In compliance with your request, delivered through Messrs. Barrow & Osborne, Savannah, I send you herewith *one* copy of the specifications for improving Cumberland Sound, Georgia.

If, after reading the specifications you should desire to bid upon the work, please inform me, when two more copies of the specifications will be sent you.

Very respectfully,

O. M. CARTER,
Capt. Corps Engrs. U. S. A."

Carter also sends R. A. Johnson, Augusta, only one copy of the Savannah Harbor specifications writing a similar letter as to it. (Shields Vol. 1) p. 199.

Now if there had been an R. A. Johnson at Augusta who wanted to put in a bid, he could not have bid with one copy of the proposals only. He could not have received the one copy before Sept. 5th, and that would have given him but three days exclusive of the day of opening to write or telegraph

for the additional copies, to get them to Augusta, to get a $250,000 guarantor (See book of Contracts, p. 509), to execute the papers in triplicate, and to ascertain everything necessary to be known to bid on a $2,350,000 contract.

Why did not Carter send the copies to Barrow & Osborne when first requested? Why the delay in sending one copy to Augusta when the request was to send them to Barrow & Osborne? The answer is disclosed by what was the natural result which followed, viz.: When Venable failed to get the copies through Barrow & Osborne, he was forced to disclose his identity to Carter. He then went in person to Carter's office and asked Carter for the specifications, and Carter directed his clerk to prepare the specifications, and he then took Venable into his private office (Shields Vol. 1), p. 166. What Carter told Venable there as to the nature and character of the work, and his untrue statements in reference thereto, is referred to under the head of "Chilling Bidders." (*Post*, p. 216.)

Of the other parties who were furnished with three copies of the specifications, the evidence shows how J. W. Rutherford, acting for himself and Duval, was disposed of partly by Carter's misrepresentations as to the vast expenditure necessary to the performance of the work (*post*, p. 229), and partly through Greene & Gaynor's promising Duval the haul of the stone on his railroad (*post*, p. 230), and he notified Carter before the bidding that he would not bid. (Shields Vol. 3) p. 2489.

The specifications were sent too late to the Gulf Towing Co., of Sabine Pass, Texas; Sanford & Brooks, of Baltimore, Md., and A. J. Twiggs for them to have made the preliminary investigations on the ground for putting in the bids, and it does not appear that they put in any appearance on the day of the bidding nor had they filed any bids with Carter.

Rittenhouse Moore and Schermerhorn of the American Dredging Co., and Burgyn, of the Virginia Dredging Co., did appear and bid on the dredging contracts for Savannah Harbor, but the latter at least is shown to have got the data from Carter as to the work he expected to bid on (*post*, p. 234), and Carter at least would have been a very dull man not to have known from the nature of these personal inquiries that these parties were not in the race for the jetty contracts.

The collusive relation of Ely, P. Sanford Ross and the Savannah Dredging Co., to Greene & Gaynor, is referred to (*post*, pp. 180 to 192).

John L. Grim and Jacob Friday, contractors at other points on the coast, had come to an understanding with Greene & Gaynor before the bidding, and that Greene & Gaynor had no fear from their bids on jetty work, is shown conclusively by the testimony. (See *post*, p. 224, *et seq.*)

SAVANNAH HARBOR CONTRACT, 1896.

That the same methods pursued for Cumberland Sound were used in the withholding of specifications from applicants until too late to bid, were applied to the $1,005,000 contract No. 6515, for Savannah Harbor, which was advertised and let at the same time as Contract No. 6517 for Cumberland Sound, is shown by Exhibit 165 (Shields), and the correspondence therein referred to. Indeed, most of the testimony referred to in regard to applications for specifications under the letting of the Cumberland Sound contract, refers also to the Savannah contract, so that it will not be necessary to refer to again.

GREENE & GAYNOR WERE APPRISED BEFORE BIDDING OF WHO THEIR COMPETITORS WOULD BE.

We have seen that the method pursued by Carter enabled him to know almost to a certainty before the bidding who every bidder would be. It is equally certain that in some way Greene & Gaynor got this information which could only be had in the Engineers' office, before the bidding. This is shown by the testimony of A. J. Twiggs, as to the 1891 contract at Augusta; the sending of the mysterious note by John F. Gaynor and his buying off the one competitor who had appeared in person. (*Post*, p. 200.) This is shown by the testimony of Thos. J. Agnew, as to the 1894 contract at Cumberland Sound. The attempt of the Gaynors to buy off Agnew; their failure to do so; the withdrawal of the first bid, and the putting in of a new bid; cutting down prices one-half (*post*, pp. 206-214); the second bid put in the name of Bangs, forged by Connolly, the confidential clerk of Carter (*post*, p. 210). This is shown by the testimony of W. H. Venable, as to the 1896 contracts at Savannah and Cumberland Sound. The buying off of Venable by sub-contract, and Greene's statement to Venable that he had in his pocket a second bid $200,000 less in case "outside bidders" had appeared (*Post*, p. 219), and by Gaynor's statement to Venable that he had taken up all the outstanding specifications, except Venables' and he wanted his (*post*, p. 219). It is shown by the conduct of the parties exemplified in the evidence collated under the head of "Collusive Bidding." (*Post*, p. 180.)

CARTER'S WITNESSES TO MEET THE EVIDENCE AS TO WITHHOLDING SPECIFICATIONS.

THAT OTHER OFFICERS DID THE LIKE.

Major C. McD. Townsend, of the Corps of Engineers, a witness for defense, whose testimony on another point is referred to (*ante,* p. 145), testified (Shields Vol. 3), pp. 1825-6:

"A. I usually send a single copy at first.

Q. Your specifications require bids to be put in, in how many?

A. Those were in triplicate.

Q. And your usual custom was to send one copy to a proposed bidder?

A. To anyone who asked me I sent one copy no matter who he was."

On Cross-Examination.

But he testified on cross-examination (Court Martial Record Vol. 13), p. 2878:

"Q. Would you send out specifications without any applications being made for them?

A. I do. I cannot talk from custom, but for myself I have a list of contractors in my office, and if a man wants to be placed on that list and he writes me, I put his name on that list, and whenever I have specifications, I send them to him. * * *

I say very frankly, with me, I consider the advertisement a good deal of a form. I have the list of contractors, an ample list, and I go through the form of an advertisement because the Government requires it."

Page 2875: He testified that the largest contract he ever had was about $80,000.

Now Carter kept no such list, and not a single instance is shown where he sent out the specifications to any contractor without an application made for it. There is a tremendous difference sending voluntarily to a contractor one copy in

advance of the advertisement from Carter's method hereinbefore illustrated by the evidence.

We have already referred (*ante*, p. 145) to the testimony showing that the methods of this witness were so loose that the great swindles in building hollow walls in the Washington, D. C., aqueduct were carried on right under his personal supervision for two years without his discovering them.

F. A. Mahan, Major, Corps Engineers, stationed at Montgomery, Ala., testified for defense in Court Martial, that his practice was substantially the same as that testified to by Townsend. He kept a list of contractors, and voluntarily sent them one copy of the specifications without waiting to advertise or for applications. (*Ante*, p. 147.)

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He testified (Court Martial Record Vol. 14), p. 3094:

> "I send them one copy of the specifications always, unless I know absolutely they are going to bid; then I am apt to send them three copies."

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Mahan also testified (Court Martial Record Vol. 14), p. 3093: That the number of specifications that are furnished to an officer is only limited by the number he asks for.

Major Joseph Willard, Corps of Engineers, stationed at Vicksburg, Miss., testified for defense in Court Martial, that he kept a list of contractors to whom he sent out voluntarily copies of the specifications. (Court Martial Record Vol. 14) p. 3123:

> "Q. If a man simply writes and asks you 'please send me specifications,' how many would you send him?
>
> A. If he is known in the list of contractors, I would send him the complete set, because I should make up my mind that he intended to bid.
>
> Q. And if you didn't know him?
>
> A. I would send him one."

Wm. L. Marshall, Major, Corps of Engineers, testified that he, too, kept a list of contractors in his office to whom he sent a *full set* of specifications as soon as issued without waiting

for advertisement or applications. That afterwards if applicants make application, he sends one copy with information that they can get others at his office. (*Ante*, p. 153.)

It will be noted that Carter kept no list of contractors, and sent no specifications out voluntarily as did his witnesses, Townsend, Mahan, Willard and Marshall. It will be noted too that under Marshall's plan of sending out a full set of specifications to a large list of contractors, that it was not practicable for him to know who the competitors would be before the bidding. *

It will be noted too that these officers do not appear to have adopted the practice carried on by Carter in contract after contract for years, of begging the return of specifications from every applicant not intending to bid. That Mahan testified that in general the officer could obtain an unlimited supply of specifications by simply asking authority to print them. (Court Martial Record Vol. 14) p. 3093.

It is not the mere fact that the officer under certain circumstances would be fully justified in sending out only one copy to the applicant, that is criticised, but the circumstances in which Carter did it, and the use he made of it, to possess himself of information, which the evidence shows Greene & Gaynor became immediately thereafter possessed of.

P. 179. Note

*Carter did not furnish specifications except in response to additional letters specifically calling for them after contracts were advertised. Even to persons who wrote asking to be put on such an office list. See letter of Twiggs to Carter Mch. 8, 1893, and Carter's reply Mch. 10, 1893. (Vol. 13, p. 1559.)

The advertisement for the Augusta contract was not put in newspapers until June 4, 1893, the bids to be opened June 19, 1893. (Vol. 3, p. 1558.)

Twiggs had to write again to Carter June 6, 1893, to be furnished with the forms (specifications) and June 7, 1893, he was sent 1 copy, and on June 10 he had to write for the other 2 copies, which were sent him June 10, 1893. (Vol. 3, p. 1560–1.)

Collusive Bidding.

P. SANFORD ROSS AND CHARLES C. ELY.

We have already seen (*ante*, pp. 105-115), that Greene and Gaynor in the name of some one of them or of some one for their benefit, obtained *every* jetty contract let in the Savannah district during Captain Carter's administration except one, the small Twiggs contract on the Savannah river at Augusta, let July 5, 1893; and Carter's crushing of Twiggs in the execution of that contract will be treated herein subsequently (*post*, p. 318).

It also appears that P. Sandford Ross, a resident of New Jersey, obtained every dredging contract let in the Savannah district during Captain Carter's administration except the final dredging contract for Savannah Harbor let Oct. 8, 1896, which was let to Rittenhouse Moore. As to this last, comment will be made hereafter. Ross had the dredging contract for Savannah Harbor let Nov. 10, 1888. Report Chief of Engineers for 1889, p. 1228, offered by defense (Shields Vol. 3), p. 1949. Ross had also a dredging contract at Savannah previous to that under General Gillmore (Shields Vol. 3), p. 2508. Ross also had the entire dredging contract under what was known as the big project of 1890 for improving Savannah Harbor (Shields Vol. 3), p. 2519.

P. Sandford Ross, as a witness for the defense, testified (Court Martial Record Vol. 18), p. 4037:

> "I had the dredging cotnract here (Savannah) for 1892, —continuous contract."

In the Removal Proceedings (Shields Vol. 3), p. 2507, he testified:

> "Q. When did you begin doing work in the Savannah district?
>
> A. About 1883.

Q. Prior to that time had you bid on any work there in which you had not received the contract?

A. No. I think I received the contract, the first work I bid on there.

Q. Since that time has your work there been large or small in amount?

A. At times it has been large. We have had a regular established office and plant at Savannah ever since."

Before the Court Martial, Ross fixed the time of getting his first dredging contract in the Savannah District as 1884 or 1885 (Court Martial Record Vol. 18), p. 4037.

He also testified before the Court Martial (Court Martial Record Vol. 18), p. 4040, as follows:

"In the work that has been done here (Savannah District) by you or your company, who has represented you?

A. Mr. Ely."

And on page 4044 (*idem*) he testified as to whether specifications were sent out to him:

"A. No; because I had a representative here that always got papers as soon as they were ready.

Q. Mr. Ely?

A. Yes, sir."

The Ely referred to as the other evidence shows, was Charles C. Ely.

It was Ely who made up the details and figured on the bids which were put in under P. Sandford Ross's name. (Court Martial Record Vol. 18) p. 4046.

Now, P. Sandford Ross never obtained a jetty contract in the Savannah district, and testified he never had had a mattress work contract anywhere. (Shields Vol. 3) p. 2517. Nevertheless we find that while he always got the dredging contracts, he was always, no matter how Greene and Gaynor varied their bids, just a little higher on jetty work contracts than they were.

The following comparison of the prices bid for mattresses

per square yard in the Gaynor and Greene bids, and in the Ross & Ely bids for the same contracts will illustrate this.

The bidders and prices are taken from the contracts, in evidence and Exhibit 108 (Shields), and from Carter's abstract of the proposals in evidence in Court Martial and with one or two exceptions are stated also in defendant's Exhibit 24 (Court Martial).

Contract No.	Place	Date	Ostensible Bidder	Gaynor's Price	Ross and Ely's Price	Ostensible Bidders
2744	Savannah	1884	J. F. Gaynor...	.47	.57	P. S. Ross
3282	Savannah	1886	J. F. Gaynor ..	.38	.52½	P. S. Ross
3890	Savannah	1888	W. T. Gaynor..	.63	.74	P. S. Ross
4224	Savannah	1890	J. F. Gaynor ..	.85	.95	P. S. Ross
4517	Brunswick	1891	J. F. Gaynor...	.96	1.02	C. C. Ely
4637	Ft. Clinch	1891	W. H. Walsh ..	.99	....	.....
			E. H. Gaynor. .	1.15		
4820	C. Sound	1892	W. H. Walsh ..	1.26	1.32	C. C. Ely
			E. H. Gaynor .	1.05	....	
4960	Savannah	1892	Atlantic C. Co .	.95	1.10	P. S. Ross

C. C. ELY CONTRACT BRUNSWICK 1889.

In addition to the above:

In Contract No. 4037, May 30, 1889, for Brunswick, there were two bidders only, D. V. Howell, at 67 cents per cubic yard and Chas. C. Ely at $1.34 per cubic yard, for mattresses.

Carter recommended in letter to the Chief of Engineers, the rejection of the D. V. Howell bid for informalities and stating that D. V. Howell had failed while executing work at Savannah some years before, and he recommended the acceptance of the Ely bid. (Court Martial Record Vol. V) p. 1061. The fact that D. V. Howell did not so fail will be referred to later. *

Although this contract was awarded to C. C. Ely, the contract was executed by Greene & Gaynor, one of the Gaynors was manager of the work, and Ely did not appear about the construction at all. Testimony of A. S. Cooper (Shields Vol. 1), pp. 507-8. All of Carter's disbursing checks issued to C.

C. Ely for that work bear the endorsement of Greene or the Gaynors (*ante*, p. 111).

Chas. C. Ely called Sept. 24, 1897, before the Board of Officers by Captain Carter stated (Board Record Vol. 1), p. 424:

"Q. It is of record that you sent a check for something over $2,000 to B. D. Greene?

A. Yes, sir.

Q. Was not an Act of Congress passed to have a re-issue of that check?

A. I think there was.

Q. Why was that check sent?

A. We hired them to do the work.

Q. Who do you mean by them?

A. Greene & Gaynor.

Q. You bid on the work March 4, 1893, at Brunswick Harbor and didn't get it, had you gotten it would you have hired Greene & Gaynor?

A. I could not say. I bid high on the work and did not expect to get it; I did not expect to get it when I bid on it."

Again (Board Record Vol. 1), p. 427, Ely stated:

"Q. You said a while ago that you hired Greene & Gaynor to do some work for you under this Brunswick contract: did you work there at all, were you there at all?

A. I suppose I was, I cannot say positively now, it was so long ago.

Q. You didn't take charge of the work and direct it, you simply turned it over to them?

A. No, sir, I didn't. I hired them to work."

Before the Court Martial in 1898, Chas. C. Ely, was again called as a witness by Captain Carter, and this time testified as follows (Court Martial Record Vol. 17), p. 3775:

"A. I have employed B. D. Greene to do work for me, and his plant on a certain contract, which I think I know what you have reference to. It was at Brunswick.

Q. You have employed B. D. Greene?

A. Yes, sir.

Q. In what capacity did B. D. Greene execute the contract?

A. As an employee.

Q. As one of your employees?

A. Yes, sir.

Q. At what salary?

A. That I decline to state; that is a personal matter of mine.

Q. No, sir; it is a question pertinent to this case.

A. I decline to answer it."

Again, p. 3776: Vol 7 03553

"Q. What kind of an employee was Captain Greene, a foreman of laborers, superintendent of construction, or consulting engineer, or what?

A. That I decline to state; that is my own business matter."

Again:

"The COURT: Unless he answers proper questions, the Court will be obliged to strike out all testimony. (To witness): You refuse to answer?

A. I don't see where that applies to the work at all. I employed them, and their plant to do the work; they are practically my agents for doing the work, which I considered them. That is the only way I can answer.

Q. Were the checks for that work turned over to B. D. Greene?

A. They were, over to him or Mr. Gaynor. I don't know which.

Q. You didn't retain any of them?

A. No, sir, I didn't.

Q. Then you didn't pay him a salary at all?

A. Pay them a salary? No, I didn't give them a salary." Vol 7 03554

Again, p. 3778:

"Q. Did you have the contract for dredging?

A. P. Sandford Ross or Ross & Sandford, I think it was at that time.

Q. Were you working for them at that time?

A. I was their superintendent."

It appears therefore, that the only jetty contract, No. 4037, which was awarded to Ely, was at once turned over to Greene & Gaynor, who executed the work and got all the money for it.

FORT CLINCH 1891 WALSH CONTRACT.

But this was not the only contract in which co-operation between them is absolutely shown. Referring again to the table (*ante*, p. 182):

There were but two bidders for Contract No. 4637, for the Fort Clinch contract of July 20, 1891, the prices per square yard bid being:

E. H. Gaynor, at $1.15.

W. H. Walsh, at 99 cents.

The guarantors on the Walsh bid (see Shields Exhibit 108), were Charles C. Ely and W. F. McCauley.

W. F. McCauley testified (Shields Vol. 3), p. 2694:

That he has been Secretary and Treasurer of the Savannah Dredging Company since 1881, and that Jacob Paulsen was and is its President.

That McCauley was also Secretary and Treasurer of the Propeller Towboat Company, of Savannah, and Jacob Paulsen was also its President.

That Benjamin D. Greene and John F. Gaynor were both at the time stockholders of the Savannah Dredging Company (p. 2708-9).

McCauley further testified (Shields Vol. 3), p. 2702:

"Q. Now, McCauley, at the time that you signed these papers for Mr. Walsh, or were guarantor for Mr. Walsh, you didn't know him did you?

A. No, sir; I would not know Mr. Walsh today if I met him. I signed that paper for Colonel Gaynor.

Q. Mr. John F. Gaynor?

A. Yes, sir.

Q. You only knew Mr. Walsh through what Mr. Gaynor told you about who he was?

A. Yes, sir."

Again (Shields Vol. 3), p. 2711:

"Q. When you signed these papers for Mr. Walsh or rather guaranteeing Mr. Walsh's bid, Mr. John F. Gaynor told you that he would protect you on your signature?

A. Hold me harmless.

Q. And that was the inducement?

A. Yes, no other inducement. It was simply a bidder's bond."

W. H. Walsh was one of Greene and Gaynor's foremen. Testimony of Cooper (Shields Vol. 1), p. 509.

John F. Gaynor was a guarantor on the E. H. Gaynor bid for the same contract.

The two original proposals are in evidence as Court Martial Exhibits 94 and 95. An inspection of these proposals will show that some parts of each of them is in the handwriting of the same person. Mr. David N. Carvalho, the expert on handwriting, testified (Court Martial Record Vol. 9), p. 1942, that these parts were in the handwriting of John F. Gaynor. The two bids are dated the same day, July 9, 1891, and the fact that John F. Gaynor was the real bidder on both of the proposals appears independently of any testimony as to handwriting.

The contract was awarded to Walsh, but all the disbursing checks were endorsed over to Greene and Gaynor. (*Ante*, p. 112.)

Since the lowest bidder was to be awarded the contract, the reason for putting in two bids in different names, must have been to mislead the Government authorities into the belief that there was competition when, in fact, the bidders knew there would not be.

Exhibit 161 (Shields) shows that Carter advertised this contract for only 17 days in local newspapers and only 13 days in the Engineering papers.

But these collusive proposals for Contract 4637 for Fort Clinch, show also that Ely was a party to the collusion.

Walsh was Greene & Gaynor's foreman and the guarantors on the Walsh proposal were W. F. McCauley and Chas. C. Ely. If McCauley became a guarantor for the Walsh bid at John F. Gaynor's request, and since that bid was a Greene & Gaynor bid, what was C. C. Ely doing guaranteeing that bid?

CONTRACT NO. 4820, CUMBERLAND SOUND, 1892.

The bidders, guarantors, and prices bid on mattresses per square yard for contract No. 4820, let to E. H. Gaynor, Sept. 16, 1892, are set forth in defendant's Exhibit 24, and Government Exhibits, in Court Martial Record, as follows: Chas. C. Ely, $1.32; Guarantors, Jacob Paulsen & W. H. Ray. Wm. H. Walsh, $1.26; Guarantors, W. F. McCauley & M. J. Wheeler. Ed. H. Gaynor, $1.05; Guarantors, B. D. Greene & W. T. Gaynor.

As we have already seen, W. H. Walsh was Greene & Gaynor's foreman, and in the preceding contract No. 4637, Ely and McCauley had guaranteed his bid, and Greene and Gaynor had executed the contract and received all the money for it. And we had W. H. Ray backing the E. H. Gaynor bid as a gaurantor. We now have the same parties exchanging places:

W. H. Ray and Jacob Paulsen (President of the Savannah Dredging Co.) backs C. C. Ely.

W. F. McCauley (Treasurer of the Savannah Dredging Co.) backs W. H. Walsh, and

B. D. Greene and W. T. Gaynor back Ed. H. Gaynor.

But the record shows that when the contract was awarded to E. H. Gaynor, that B. D. Greene and John F. Gaynor did the work and got the money for it.

W. F. McCauley testified as to his guaranteeing the Walsh proposal (Shields Vol. 3), p. 2704; that he was sick with

typhoid-malarial fever and confined to his home from Aug. 18 to Sept. 22, 1892, and that he signed the Guaranty at his home Sept. 8, 1892, and (p. 2702) that he did not know Walsh at that time, and that he signed that paper for John F. Gaynor, and (p. 2711) that Gaynor told him he would hold him harmless.

Thus again we have Greene and Gaynor putting in two bids under different names absolutely proven to be collusive by positive testimony, although Mr. McCauley testified that he was used innocently and was not in collusion himself.

But the circumstances heretofore adverted to show equally that the third or Ely bid, was also collusive.

CONTRACT NO. 4960, SAVANNAH HARBOR, 1892.

THE BIG $3,500,000 PROJECT.

This contract was advertised for only 25 days in the local newspapers and for only 23 days in the Engineering papers. As to disregard of the regulations in this respect (see *ante*, page 125).

The dredging contract was advertised to be let at the same time.

There were but four bidders on the jetty work, and the bidders and prices bid for mattresses per square yard are shown in Exhibit 182 (Shields), or defendant's Exhibit 24, in Court Martial, as follows:

Jetty Contract—Bids.

Atlantic Contracting Co.	$1.08 sq. yard mattress.
W. F. McCauley	1.13 sq. yard mattress.
P. S. Ross.	1.10 sq. yard mattress.
American Dredging Co.	1.08 sq. yard mattress.

The jetty work was awarded to the Atlantic Contracting Company.

Dredging Contract Bids.

Atlantic Contracting Co. .....17½ cents cubic yard.
W. F. McCauley. .....17 cents cubic yard.
P. S. Ross. .....16 cents cubic yard.
American Dredging Co. .....17-1/4 cents cubic yard.
National Dredging Co. .....17-9/10 cents cubic yard.

The dredging was awarded to P. Sandford Ross.

THE McCAULEY BID.

(Exhibit 34, Court Martial.) Vol. 2 / 59695

The proposal made by W. F. McCauley for Contract No. 4960, is dated Sept. 16, 1892. McCauley testified (Shields Vol. 3), p. 2704:

That he was confined to his house with an attack of typhoid-malarial fever from Aug. 18th to Sept. 25, 1892.

McCauley testified (Shields Vol. 3), p. 2706:

"Q. Now, referring to this proposal, the one made by yourself for the 1892 contract at Savannah; you do not know who wrote the proposal?

A. No, sir, I have no idea.

Q. They were done by somebody down at the office while you were at home sick?

A. Yes, sir.

Q. They were brought to you for signature?

A. By Mr. Jacob Paulsen. He came to see me two or three times, and we had almost made up our minds not to bid, because you will notice the bond is a very large bond, and we did not know whether we could give the bond or not, and he was the only member of the firm that could sign a bond of that magnitude, and we decided to make the bid out in my name and he and Col. Estell would sign the bond.

Q. You do not even know whose handwriting these figures in the proposal are in?

A. No, sir.

Q. They were not written in your presence, and you were too ill at the time to have done it?

A. Yes; the bid was made up just as you see it with the exception of my signature, and my signature is appended there."

He further testified (Shields Vol. 31), p. 2696:

"Q. Mr. McCauley, was the bid put in by you a *bona fide* honest bid?

A. The bid was put in by me acting for the Savannah Dredging Company. The bid was signed by me at home in my house. Mr. Paulsen took the bid and deposited it in Carter's office.

Q. Was it an honest *bona fide* bid?

A. It was an honest *bona fide* bid *as far as I know.*"

Jacob Paulsen, the President of the Savannah Dredging Company, was called as a witness for the Government in the Court Martial trial and testified (Court Martial Record Vol. 6), p. 1333:

"Q. Is there any agreement among the Dredging Companies in these waters—any business partnership, in order to facilitate their business?

A. I don't understand you.

Q. Is there any agreement among them as to a division of the work or the way to get work?

A. Am I on trial?

Q. No; indeed, I don't mean any reflection on you in the slightest degree?

A. Well, the question you asked me—

Q. It is a business proposition.

The Witness: I beg the court to protect me. I don't think I ought to answer that question."

Page 1335:

"Q. You decline to answer that?

A. Yes, sir; I don't think I ought to answer that."

Page 1335:

"Q. Do you remember making out the bid?

A. No. I do not remember making out the bid."

Vol 4 P 2026
Page 1336:

"Q. You were engaged in dredging mainly, were you not?

A. Yes, sir.

Q. Had you ever had a contract for jetty work?

A. No, sir."

Vol 4 P 2031
Page 1343:

"Q. You went to the extent of having bids put in in the handwriting of one of your clerks you think?

A. Yes, sir; but I could not swear that it was.

Q. You don't really know who filled out that paper?

A. No, I don't remember. I have been honestly trying to remember who did it, and I can't do it; that is honest; that is the truth."

Vol 4 P 2032
Page 1344:

"Q. Did you get any information from any source whatever except from the specifications?

A. I didn't get information from Mr. Gaynor.

Q. I asked you from any source.

A. I don't want to answer that.

Q. You decline to answer that?

A. Yes, sir; in fact I don't remember who I got the information from."

The witness is then shown the original proposal of P. Sandford Ross (Court Martial Exhibit 262) and the Savannah Dredging Co. proposal (Court Martial Exhibit 263) Dredging contract of 1890, and his attention is called to the similarity of handwriting and of ink used, in the figures in the bids, and questioned as follows (Court Martial Record Vol. 6), p. 1346:

"Q. Did you have any understanding with Mr. Ross in regard to that bid?

A. I could not answer that.

Q. You decline to answer it?

A. Yes, sir.

Q. Then you are not going to tell us all you know this morning?

A. No; I don't think I have the right to tell you my private business. Supposing Mr. Ross and I did have an

P. 191. Note

*The testimony of Carvalho shows that the figures of the bid of P. Sanford Ross and of the bid of McCauley were written with the same ink and by the same person. (Vol. 5, p. 2337.)

understanding, I don't think you have the right to go into my private business.

Q. That is public business; it was an expenditure of public money that was involved; the public interest of every tax-payer in the country is involved in that question?

A. I decline to answer it.

Q. You decline to answer?

A. Yes, sir.

Q. Let the proposals answer for themselves.

Did your boats do any dredging under that contract?

A. Yes, sir.

* * * * *

Q. Did you have any of the dredging under the contract bid for by Mr. McCauley—the big contract?

A. Yes, sir; we had some of that.

Q. You had some of each?

A. Yes, sir."

Charles C. Ely testified before the Court Martial (Court Martial Record Vol. 17), p. 3766, that the figures "18" in Ross bid of 1890, Exhibit 262, was in his handwriting.

Whether Ely wrote the figures in the Savannah Dredging Co.'s bid 163 or not, the conclusion that the W. F. McCauley or Savannah Dredging Co. bids were collusive seems inevitable. That Ely and Ross had an understanding with Greene & Gaynor, that the former were to have the dredging contracts and the latter the jetty is demonstrated by their conduct in spite of their denials or evasions.

The Sav. Dredging Co helped Ross do the dredging under the dredging contract awarded to Ross Vol 4

AMERICAN DREDGING CO. (SCHERMERHORN) BID.

The evidence hereinbefore referred to sufficiently shows the collusion existing between three out of the four bids for the jetty work in the big contract of 1892. The fourth bid for jetty work was put in by Mr. L. Y. Schermerhorn of the American Dredging Co. of Philadelphia. He also put in a bid for the dredging.

This was the first bid for mattress work his company ever made. Testimony of Schermerhorn (Shields Vol. 3), p. 2032.

Exhibit 161 Shields, shows that this contract was only advertised 25 days in the local papers and 23 days in the engineer journals. The advertisement was, however, dated Aug. 17th and bids were to be opened Sept. 17, 1892. (See Book of Contracts, p. 281.)

On Aug. 26, 1897 (Exhibit 162, Shields, and Carter, Savannah Files 58), the American Dredging Co. (Schermerhorn President) writes to Carter for "specifications and forms of proposals for improving harbor at Savannah, Ga." Now the specifications themselves (see Book of Contracts, p. 282) contained the provision:

> "All bids and guarantees must be made in triplicate upon printed forms to be obtained at this office."

And Carter had previously rejected bids because not made in triplicate although the bidder wrote that he had not seen the advertisement in time to so prepare them. (See Carter's letter of May 13, 1889) to Chief of Engineers, recommending the rejection of the D. V. Howell bid because not made in triplicate (Court Martial Record Vol. V), p. 1061.

Notwithstanding this, Carter on Aug. 29, 1892, responded to the request by sending only a single copy of the specifications to the American Dredging Co. Exhibit 162 (Shields) and Carter's letter press book No. 1, p. 454. And in this letter he says:

> "In compliance with request contained in your letter of the 26th inst., one copy of the specifications for improving the harbor at Savannah, Georgia, is sent you herewith.
>
> Please consider the specifications carefully and if you decide to bid upon the work I shall take pleasure in showing you over the same, giving you all the available information concerning it and furnishing you with the two remaining copies of the specifications necessary to enable you to submit your bid. If you do not intend to bid, please return the inclosed specifications."

Now this letter was written just nineteen days before the bids were to be opened. The letter was framed in the same form he used in replying to all applicants for specifications. (See *ante*, p. 158.) Whatever may have been Carter's motive, the course adopted, gave Carter in advance of the bidding, the knowledge of whether every such applicant would be or intended to be a bidder. If they returned the one copy sent or failed to apply for the additional two copies, he would know that they did not intend to bid. If they applied for the two additional copies, he would know that they intended to bid.

The method adopted also put them on notice that they needed to talk with him and get information from him. This afforded him the opportunity to chill the bidders on the cost of the work, an opportunity which he fully availed himself of as the occasion required. (See *post*, 216.)

The method also consumed the time which the applicant would have had in making a personal examination of the ground for himself, and in arranging sureties for his bond and getting guarantors for his bid.

The guarantor had to justify in the sum of $375,000, and the bondsman in the sum of $1,000,000. (See Book of Contracts, pp. 283 and 285.)

On Sept. 7, 1892, Schermerhorn wrote for the two additional copies of the specifications. Exhibit 162 (Shields) and letter in Savannah Harbor File 70. In this letter Schermerhorn says:

> "What would be the amount of bond on the bid for dredging alone?"

On Sept. 9, 1892, Exhibit 162 and Carter's letter press book No. 1, Savannah Harbor p. 477 Carter writes Schermerhorn sending him the two additional copies and saying that should the contracts for jetty work and dredging be awarded separately the bond would be $500,000 each.

This is the first time outside bidders were put on notice that a bond for less than a $1,000,000 would be received for the respective contracts. And this was only eight days before the opening of the bids!

Within this time the bidder had to form such an accurate idea of the conditions of the work, the source of supply of mattress and rock material and cost of labor, that he could compete with others on $3,150,000 of work. And too he had to arrange for his guarantors and bondsmen. What time had he to do it in?

Schermerhorn testified (Shields Vol. 3), p. 2032: Vol 3 - 2124-0

"Q. How many days prior to the opening of the bids was it that you were in Savannah; how many days before the opening of the bids did you get there?

A. I think I was two or three days in Savannah before the opening of the bids.

Q. Before you put in your bid, what visits did you make in or to the Savannah Harbor, investigating as to the character of the work and the place from which you would get your material, and all those matters?

A. It should not be assumed that all the information which I obtained which I considered necessary to the submitting of the bids was confined to the two or three days from the time at which I arrived at Savannah until the submitting of the bids. Directly after the receipt of the specifications from Captain Carter's office and at Philadelphia I made a very careful study of the specifications so as to permit myself to reach clear conclusions in relation to what was to be done. I carefully examined the reports of the Chief of Engineers to determine what construction had been made in and about that locality in the past, and about what quantities and about what the prices had been bid by the various contractors. That was a character of information to a certain extent to anticipate the prices which I would bid. Then when I reached Savannah I found that the town was pretty well filled up with a large number of men who were there inviting the attention of prospective bidders in relation to the supply of materials for the work. I interviewed such men, a number of them, and obtained from them, making such

inquiry as I could at the locality in relation to the reliability of the sources of supply and of the financial character and ability of these men to carry their propositions into effect.

Q. I want to ask you about that particular point. Now, about the point from which you obtained brush and brush mattresses; not on the question of stone at present, but on the question of brush mattresses. What do you say about that?

A. I can only say that I satisfied myself, at least so far as I felt it was necessary to reach conclusions, in relation to the sources of supply, character of material and the prices to be paid for them which would permit me to bid the prices which I did, covering that character of work.

Q. Did you go around to any of the places from which the brush would be obtained, yourself?

A. I made no physical examination of the sources of supply of brush.

Q. And your information then in regard to the prices of brush material and points from which you could get it, was obtained in those two or three days by inquiry in Savannah?

A. The specific prices which would be charged, or which would be asked for that material compared with prices that had been bid before, was obtained by the class of inquiry which I have stated I made in the two or three days prior to the opening of the bids. That was the custom which I have invariably adopted in such cases.

Q. The fact that there was nobody engaged in supplying brush to contractors for brush fascines as you knew, or do you know now in regard to your inquiries there; was there anybody that was proposing to sell you brush or anything of that sort, or telling you where you could get it?

A. There were parties I met in Savannah proposing and telling me where I could get it.

Q. You investigated them—I mean your bids were based on that without visiting the locality from which the brush was to be obtained, to see the distance it was from the point of delivery, and so on?

A. I made no such examination."

But suppose Schermerhorn did get prices on the cost of

brush from local men, how did that put him in a position to compete with Greene & Gaynor? Carter was allowing them to get brush from Government reservation without any charge for it whatever.

See Carter's letters granting them that privilege: Letter May 5, 1891, as to Fort Clinch Reservation, Cumberland Sound. (Wyman Vol. 1) type. p. 309.

Letter Sept. 16, 1892, as to Fort Clinch Reservation Cumberland Sound (Wyman Vol. 1), type. p. 310. This was the very day that contract No. 4820 was awarded to Ed. H. Gaynor.

Letter Nov. 28, 1896, as to Point Peter and Fort Clinch Reservations, Cumberland Sound (Wyman Vol. 1), p. 314.

This was immediately preceding the commencement of work on contract 6517 of Oct. 8, 1896, at Cumberland Sound.

None of the other proposed bidders were given notice that they could get the bulk of their supply of brush free in the immediate vicinity of the Cumberland Sound work.

It is therefore quite clear that Schermerhorn, whose dredging company never had had a mattress work contract, was really making no serious effort to get the jetty contract, and that not having had the time to investigate properly the local conditions, he relied upon the "current prices" which had prevailed in the district, which he obtained from the Chief of Engineers' report before he left Phladelphia in fixing the prices he bid for mattress work.

As the only previous contract let in the district in which a "log and brush" mattress is joined in the same contract with a brush mattress, which appears in the report of the Chief of Engineers, is Contract No. 4572 of May 4, 1891, of John F. Gaynor, of 99 and 97 cents per square yard for Cumberland Sound, the criterion relied on by Schermerhorn for fixing prices to be bid, is destroyed as a measure of competition.

Indeed, so pressed was he for time to get in his bid at all that the fact is he either filled in the prices before he left Philadelphia or else was guilty of a very grave irregularity in preparing his proposal, an irregularity which if he had been the lowest bidder and had fallen down in entering into the contract and making the $500,000 bond, might have released the guarantor of his bid to the great injury of the Government.

Exhibit 32 in the court martial, is proposal and prices bid of Schermerhorn for the American Dredging Co. It bears date Philadelphia, Sept. 12, 1892. The guaranty is executed in Philadelphia, and contains this language:

> "Hereby guarantee and bind ourselves and each of us, our heirs, executors, and administrators, to the effect that if the bid of the American Dredging Company herewith accompanying, dated Sept. 12th, 1892, for improving the Harbor of Savannah, shall be accepted, etc."

And the guarantors acknowledge their signatures before a notary at Philadelphia.

Taking this in connection with Schermerhorn's testimony that he was not in Savannah except for the two days immediately preceding Sept. 17, 1892 (Shields Vol. 3), p. 2017, it demonstrates that the Philadelphia people, either guaranteed a bid in blank, and misstated it as "an accompanying bid dated Sept. 12, 1892," or the prices were fixed in Philadelphia prior to Schermerhorn's having examined into the local conditions at Savannah at all.

Schermerhorn testified (Shields Vol. 3), p. 2021, that he was not in collusion with Captain Greene or the Gaynors in putting in his bid. This may well be. But Schermerhorn went at once to Carter for information when he reached Savannah as to details and he said Carter gave him the information

freely in every direction he made inquiry. (Shields Vol. 3) p. 2017.

That the nature of Schermerhorn's inquiries put Carter on notice that Schermerhorn was not a serious bidder for the jetty work, but only for the dredging, cannot be doubted.

The reason for Schermerhorn's bidding on both classes of work when he was really after the dredging as indicated in his letter of Sept. 7th, 1892, heretofore referred to, is easily seen by reference to the specifications for this Contract No. 4960. The specifications (Book of Contracts), p. 300, provide:

> "The United States reserves the right to award the contract for jetty work to one bidder, and that for dredging to another."

From which it will be seen that unless Schermerhorn had bid on both classes of work, under a strict construction of the specifications, he might not have had his bid considered at all; but by bidding on both classes of work, he stood a chance of being the lowest bidder on the dredging, and of having his bid accepted for that separate from the other.

Whatever may be said of the *bona fides* of Schermerhorn's bid, it is certain that it did not afford that competition which the Government was entitled to have. And it cannot be doubted that the contract would not have been approved by the Chief of Engineers, had he known that three out of the four bids for this contract were collusive.

P. 199. Note

*Contract No. 5254. *Brunswick Harbor* 1893.
$18,000 Contract.

Bidders	Mattresses and fascines, cu. yd.	Rip rap stone, cu. yd.
C. C. Ely	$1.87	$4.00
Atlantic C. Co.	1.67	3.69
(Vol. 26, p. 13244.)		

Ely testified that his bid was not put in with any expectation of getting the contract. (Vol. 2, p. 665.)

Taken in connection with his collusive bids on other contracts there can be no doubt that bid was put in to give the appearance of competition.

CONTRACT NO. 4655.

SAVANNAH RIVER BELOW AUGUSTA, GA., 1891.

The Mysterious Note.

Albert J. Twiggs was a civil engineer and contractor of experience and ability. (Shields Vol. 1) pp. 700-1-2.

In 1891, Twiggs went to Savannah to bid on the contract work on the Savannah river below Augusta, Ga., which afterwards was awarded to John F. Gaynor as Contract No. 4655, of Sept. 9, 1891. Testimony of Twiggs. (Shields Vol. 1) pp. 702-3.

A. J. Twiggs testified (Shields Vol. 1), p. 704:

"A. I went to Savannah and I met Mr. Gaynor.

Q. John Gaynor?

A. Yes, sir; Colonel John Gaynor. He asked me if I was there for the purpose of making a bid on the lower river work. I told him I was, and talked over the matter some considerable time, and I don't remember the details exactly, except that we finally agreed to divide the work but I was not to put in a bid.

Q. You were to furnish stone for the work?

A. Yes, sir.

Q. Mr. Twiggs, what was the agreement between you and Mr. Gaynor then as to your not putting in any bid?

A. He was to give me the stone work and after figuring and so on, we concluded that was not quite my portion of it, and he gave me $500 additional besides the contract for the stone.

Q. Now, you were not to bid and he was to bid?

A. Yes sir.

Q. And then you were to put in the stone work under him?

A. No, sir; I was to quarry the stone and deliver them on the lighters. He was to put them in.

Q. And pay you for them?

A. Yes, sir; pay me for them.

Q. Was the money paid to you—the $500?

A. The $500 was paid, yes, sir.

Q. (By Commissioner) By whom?

A. Mr. John Gaynor.

Q. John F. Gaynor?

A. I don't remember his initials. John F., I think it is. Yes, sir.

Q. Was the $500 paid to you after the bid was put in; after they got the contract?

A. After they got the contract, yes, sir.

Q. What were you to let them have the stone for?

A. I was to give them at $1.50 loaded on the lighter at the yard."

Vol 23 P 11103

(Page 705):

"Q. During the performance of that contract by Gaynor in the Savannah river below Augusta, did you make your preparations to furnish him the stone for the contract?

A. I did, sir.

Q. Did he take it?

A. No, sir.

Q. Take any part of it?

A. No part whatever.

Q. Did you make any efforts to furnish it to him?

A. I did, sir. I went so far as to take an engine for the purpose of running a steam road to the quarry, and got all the tools ready and employed the men.

Q. Would he accept it?

A. No, sir.

Q. Did he make any excuse for not accepting it?

A. No, sir."

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Albert J. Twiggs further testified (Shields Vol. 1), p. 735:

"Q. Mr. Twiggs, going back to this occasion in 1891 when you went to Savannah and you agreed with Mr. Gaynor about not putting in a bid and received the $500, and agreed with him that you would furnish the stone for his contract, if he got it, when you made that arrangement with him, had he put in his bid?

A. No, sir, he had not.

Q. What occurred in your presence about his making the bid, and the manner in which he made it up?

A. Well, when we went in Mr. Gaynor's room after the agreement, he went to make up his bid.

Q. Which Gaynor was this?

A. It was John F. Gaynor. He got the specifications stating the approximate quantities, and he wrote them

down and then got the appropriation . He divided the appropriation by the approximate quantities, and he arrived at about the value per yard, and put in his bid just about to cover the appropriation. I asked Mr. Gaynor, I said:

'Aint you afraid to put that so high? Some other fellow might come and under-bid you and we will lose the work.' He says: 'Oh, no, there is nobody else going to bid.' I said: 'I heard a man in Augusta named George A. Denning say he was going to bid.' Gaynor said: 'I will find out.' He wrote a note and rang the bell for a boy, and the boy came up to the room and took this note somewhere; I don't know where; but in the course of a short time he returned with a note to Mr. Gaynor, Mr. Gaynor read the note and said: 'No, there is no other bid put in. We are all right.' "

Now where could Gaynor have ascertained who the bidders were going to be in advance of the opening? Carter had adopted a method by which it could be ascertained by him (*ante*, p. 176). It was a fact which could only be ascertained from his office. And yet we find that Gaynor at will, gets that information!

Twiggs further testified that he handed over and left with John F. Gaynor, the bid which he, Twiggs, had prepared to put in. (Shields Vol. 1) p. 739.

It is claimed, however, that there were three proposals for that Contract No. 4655, awarded to John F. Gaynor, Sept. 9, 1891. This was a comparatively small contract—$15,000, for work on the Savannah River below Augusta.

The proposals and prices bid were as follows (See defendant's Exhibit 24, Court Martial):

Bidder.	Brush fascines, per cubic yard.	Stone, per cubic yard.
Jacob Friday	$1.61	$3.15
Skinner & Wallace	2.10	3.10
John F. Gaynor	1.29	2.69

Jacob Friday, and Skinner & Wallace were contractors, who got contracts at other places on the Atlantic coast, while Greene and Gaynor got them in the Savannah District.

The prices bid for similar work on Savannah River at Augusta, let both before and after Contract No. 4655, will show that Friday and Skinner & Wallace could not have intended the above bids seriously.

The prices at which similar contracts were awarded for similar work at the same locality, is shown in Defendant's Exhibit 24, pages 5 and 6, in the Court Martial Record as follows:

1882 Mattresses per cubic yard	$1.15;	Stone, cub. yd. $2.45
1884 Mattresses per cubic yard	.93;	Stone, cub. yd. 2.31
1886 Mattresses per cubic yard	1.27;	Stone, cub. yd. 2.57
1889 Mattresses per cubic yard	.70;	Stone, cub. yd. 2.00
1893 Mattresses per cubic yard	.74;	Stone, cub. yd. 1.74

At any rate, John F. Gaynor for some reason known to himself, knew that he did not have to reckon with their bids, if he got Twiggs out of the way, which he did.

CONTRACT NO. 5359.

SAVANNAH RIVER BELOW AUGUSTA, 1893.

The bids for contract No. 5359, were to be opened June 19, 1893. (See book of contracts p. 413.) It was advertised for only 11 days in the Engineering papers. (Shields Exhibit 161.)

A. J. Twiggs, who resided at Augusta, came down to Savannah to bid on that contract. He testified as to what occurred there. (Shields Vol. 1) p. 706:

"A. I went to Savannah and there I met Mr. Ed. Gaynor who approached me and asked if I was there for the purpose of putting in a bid and I told him I was. He

asked me why we couldn't get together and make some arrangement in regard to it. I told him for the simple reason we could not. He said: 'I know you and John had a little difficulty heretofore, but we'll let all that pass now and I will talk to you about it,' and he talked several hours, and finally offered me $1,000 not to put in a bid, which I refused, and he repeated his offer, and I think I remarked to him, 'Why, I rather give you $1,000 if you will go home,' in that way or something to that effect, and after a time he went to Captain Carter's office and on the steps going up he had two bids in his hand and held them up and said, 'Now, you had better accept my proposition and go home. If you do we will put in this bid. If you don't we will put in the other and beat you.' I said, 'You will have to put in the other and beat me because I am going to put in a bid.' We went upstairs and put in the bids and I beat Mr. Gaynor, my recollection is, something over $400 on the entire work. The work was awarded to me."

Vol. 2 p. 111 (?)

Again, on page 707:

"Q. (By Mr. Erwin.) After you put in your bid did you have a conversation then with Edward Gaynor in reference to giving it up?

A. Yes, sir. I went to the hotel and Mr. Gaynor again approached me and told me I had better let him have the work, I remarked to him that I had already gotten it and saw no reason for it. He repeated his offer again and told me I could throw it up and not sign the contract. I told him I had given a bond. 'There is my guarantee. How can I do it?' He says, 'We will take care of that. We will see you are not hurt in that.'

Q. You refused to do it?

A. Yes, sir."

How Twiggs was treated and unjustly crushed by Carter in the execution of the work under this contract will be referred to hereinafter. (See *post*, p. 318.)

$170,000 CONTRACT.

The proposals for this contract were to be opened September 29, 1894. (Book of Contracts p. 439.) The bidd that contract and prices bid are stated in Defendant's 24, Court Martial Record, as follows:

Bidders.	Mattresses, sq. yd.	Rip Rap Stone, cubic yd.	
Anson M. Bangs	$0.57	$2.00	$88,000
R. G. Ross & Co.	.85	2.85	128,000
Rittenhouse Moore	.90	2.80	129,000

One of the remarkable features of this letting is, that the specifications for this contract are substantially the same as for the previous contract, No. 4820, let to E. H. Gaynor at $1.05 per square yard for mattresses and $3.59 per cubic yard for stone, for work at same place, September 16, 1892, and substantially the same as specifications for the subsequent contract, No. 6517, let to the Atlantic Contracting Company at $1.10 per square yard for mattresses at the same place October 8, 1896.

We thus see that there was a fall in the price of brush mattresses at Cumberland Sound of nearly 50 per cent. in 1894, for some cause not operating at the lettings in 1892 and 1896.

What was the cause? The contract had only been advertised 19 days in the local papers and 14 days in the engineering papers, and that in connection with the system adopted by Carter of withholding specifications from applicants (see *ante*, p. 157), was sufficient to shut off outside competition, for the only outside bidder who appeared was Rittenhouse Moore, a dredging man and R. G. Ross & Co. That the only contest was practically between Anson M. Bangs (or the Gaynors) and R. G. Ross & Co. of Jacksonville, Florida, who must not

be confounded with P. Sanford Ross, will be demonstrated by the following testimony:

Thomas J. Agnew, a gentleman connected with the firm of E. B. Hunting & Co., of Savannah, who were the agents of R. G. Ross & Co., contractors of Jacksonville, Florida, undertook to get from Carter copies of the specifications and afterwards to put in a bid of R. G. Ross & Co.

Vol. 23 P 10620-1

Mr. Agnew testified (Shields Vol. 1), p. 222-3:

That in September, 1894, he went to Captain Carter's office and saw Mr. M. J. Connolly, Captain Carter's clerk, who told him

> "That these specifications could only be obtained from Captain Carter in person, or by his direct order to the clerk."

Vol 23 P 10620

The witness testified (p. 222):

> "I made two and I think three visits to Captain Carter's office to try to obtain those specifications."

Again (page 224):

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> "After failing to get those specifications in person, I requested my family physician, Dr. Brandt, to make an effort to get them for me, which he failed to do."

That Dr. Brandt tried to get them is shown by Carter's letter to Brandt, September 21, 1894, from Carter's official letter-press book, Cumberland Sound No. 1, p. 427. (Shields Vol. 1) p. 248:

Vol. 23 P 10646

"Savannah, Ga., Sept. 21, 1894.

Dr. C. N. Brandt,
Savannah, Ga.

DEAR SIR:

Replying to your letter of the 20th inst. I have to inform you that plans and specifications for the Fernandina work *can be seen at this office.*

The necessary papers for submitting bids will be furnished to *all those who will bid on the work.*

Very respectfully yours,
O. M. CARTER,
Capt. Corp. Engrs. U. S. A."

Carter also addressed a similar reply on September 21, 1894, to request of Agnew for Hunting & Co. The reply was couched in precisely the same language, Exhibit 6 (Shields Vol. 1), p. 248.

Agnew then wrote Carter as follows, Exhibit 5 (Shields p. 247):

"Savannah, Ga., Sept. 21, 1894.

Captain O. M. Carter,
Corps of Eng. U. S. A.
City.

Your esteemed favor of this date:

We beg to say that we have called at your office and requested a copy of the specifications and blanks to bid on, and have been told that they could only be obtained from you in person, but that if we would leave a note for you the papers would be sent to us by mail. Will you kindly instruct your clerk to allow us to see the specifications, and furnish us with the papers to bid on. Will call on Saturday morning.

Yours truly,
E. B. HUNTING & Co.,
AGNEW."

This was only eight days before the bids were to be opened.

Agnew further testified that after writing this last letter he got the specifications, and that they were handed him by Mr. Connolly. (Shields Vol. 1) p. 225.

But why should Carter absent himself from his office at a time when applications were expected and with bidders given such a short time, and why should he issue such stringent orders to his clerk about not giving out specifications?

Why should he adopt a method in his replies to Dr. Brandt and to Agnew, to force them to his office, and to determine that they would actually be bidders before he would give out the specifications?

The following testimony will elucidate that. Agnew testified (Shields Vol. 1), p. 226, that he mailed the specifications to R. G. Ross & Co., Jacksonville, Florida, and received them

back in a sealed envelope on the day the bids were to be opened.

Vol. 3 P 1062-5

Page 227:

"Q. Now, prior to putting in that bid, state what occurred, if anything, between any of these defendants and yourself.

A. I went to Captain Carter's office at about 11:30.

Q. In the morning?

A. In the morning, and after being there a few moments I was approached by Mr. Ed. Gaynor and asked if I was going to bid, or put in a bid for the Cumberland Sound work. I replied, yes. He wanted to know who for, which I refused to tell him. We had some conversation and he urged me not to put in a bid, and finally offered me $500 not to do so, which I refused. During the conversation John Gaynor came up and urged me also not to put in a bid and to accept the $500 which Ed. Gaynor had offered me.

Q. What was said by either of these two men to you about the reason for not doing it on your part?

A. Well, Ed. Gaynor said to me that if I put in a bid it would cause them to lose a great deal of money, and that it would cost a great deal of money to prepare to do that work; to get in shape to do it.

Q. You declined?

A. I declined positively to accept the $500 and went back into what I called the outer office.

Q. The Engineers office?

A. Yes, sir; not Captain Carter's office proper; but a small room, the one belonging to the suite of offices. There was then two bids on Captain Carter's desk, and at about 10 minutes to 12 o'clock, possibly a few minutes later, Ed. Gaynor came in and picked up an envelope off Captain Carter's desk and substituted another for it.

Q. From what?

A. From the desk; Captain Carter's desk.

Q. Was that the desk on which the bids were?

A. On which the bids were.

Q. How were the bids on that table, together or separate?

A. One on top of the other; two large envelopes.

Q. And he took one of these?

A. He took one of these and substituted another. And

about five minutes to 12 o'clock I laid my bid on top of it and he took a seat opposite Captain Carter's desk.

Q. So there were but three bids put in finally?

A. Yes, sir."

He further testified that the sealed bids were opened by Carter at 12 o'clock, and the three bidders turned out to be R. G. Ross & Co., Rittenhouse Moore, and Anson M. Bangs, or Bangs & Co.

As we have already seen, this one unexpected competitor caused Gaynor to swap his bid at the last minute, causing a fall in the prices of mattresses from $1.05 per square yard to 57 cents per square yard, and a fall in the price of rip rap stone from $3.59 to $2 per cubic yard.

The fall in the price of mattresses was 48 cents per square yard.

The fall in the price of rip rap stone was $1.59 per square yard.

Taking the number of square yards of mattresses and the number of cubic yards of stone put in under that contract, from Exhibit 177 (Shields) it shows that on the $159,097.10 of work done under this contract, this little bit of competition saved the Government over previous prices the following:

213,34.11 sq. yds. mattresses at 48 cts.....	$102,400.37
18,748.32 cu. yds. stone at $1.59.....	29,809.82
Total.....	$132,210.19

Anson M. Bangs, in whose name the proposal was put in, was a brother-in-law of John F. Gaynor. (Court Martial Record Vol. 17) p. 3802. Carter stated before the Board of Officers that he thought Bangs was interested in the Atlantic Contracting Company. (Board Record Vol. 1) p. 240.

Bang's Proposal Forged by Connolly, Carter's Clerk.

The original proposal of Anson M. Bangs, for Contract 5811, Cumberland Sound, is in evidence as Exhibit 153 (Shields) and Exhibit 37 Court Martial. Vol. 21 P9740

The signature of Anson M. Bangs is acknowledged before Michael A. Connolly, who in addition to being Carter's clerk and stenographer,, held an appointment as United States Commissioner. A bare inspection of the paper will be sufficient without any expert testimony to show that the body of this proposal is written out in Connolly's handwriting, as well as the signatures of Anson M. Bangs and of W. T. Gaynor, who signs as a guarantor of the bid.

David N. Carvalho, the expert on handwriting testified (Court Martial Record Vol. 9), p. 1940:

> "Q. The Bang's proposal (Exhibit 37)?
>
> A. Beginning 'Newport, Rhode Island, September 24, 1894,'—third page from the last in the book; compared with the admitted handwritings of Michael A. Connolly, everything on that page, with the exception of the amounts that are filled in and the signature 'Edward H. Gaynor,' including the signature 'Anson M. Bangs, Fayetteville, Onandaga, New York,' are all written,—it is all written by Michael A. Connolly, in my opinion."

The evidence in the record shows that all the Disbursing checks issued by Carter on that contract, went to Greene and Gaynor (see *ante*, p. 110) and (see original checks enumerated in lists Exhibits 225, 226, 227, Shields). Vol. 31

It is claimed, however, that as to one of these checks, No. 269,437, for $29,659.82, dated April 5, 1895, which bears the endorsements of Anson M. Bangs, that Carvalho testified that the name "Anson M. Bangs" was in the handwriting of B. D. Greene (Court Martial Record Vol. 9), pp. 1966 and 1958. Whereas, B. D. Greene testified that he did not sign Bangs' name on the checks, and that he was in Europe

when the check of April 5, 1895, was deposited, and that Anson M. Bangs had in Greene's presence given his brother-in-law, John F. Gaynor, authority to endorse his (Bangs') name on the back of the checks for that contract. (Court Martial Record Vol. 17) p. 3802. The defense also proved otherwise (Court Martial Record Vol. 10), pp. 2139-2142, that Greene was in Europe at the time the April 5, 1895, check was issued and deposited.

The admitted facts, however, show that Carvalho was right on the point that the signature of Anson M. Bangs on the checks were not the genuine signatures of Anson M. Bangs, if Carvalho's opinion, in passing on the few letters involved in a signature when the writer was evidently intending to disguise his writing, should have mistaken the handwriting of one partner (John F. Gaynor) for that of the other partner (B. D. Greene) it simply shows that expert opinion in handwriting is not infallible, and that he had failed to allow, for the well known fact that partners and men associated together, almost invariably acquire in the formation of their letters the peculiarities of each other.

J. W. O. Sterley, the chief clerk in the Engineer's Office at Savannah, Georgia, for many years, who was familiar with John F. Gaynor's writing and had seen him write, says Gaynor "varied his signatures sometimes." (Shields Vol. 1), p. 250.

The great similarity between Greene's writing and John F. Gaynor's will be seen by comparing the following original letters, Exhibits, in the Shields record:

Exhibit 9, Letter April 29, 1889, J. F. Gaynor to Greene.

Exhibit 72, Letter April 11, 1885, J. F. Gaynor to Carter.

Exhibit 10, Letter January 22, 1891, B. D. Greene to Carter.

Whether B. D. Greene signed Bangs' name to these checks

or whether J. F. Gaynor did it, the fact that Bangs' name was used in that contract as a figurehead for Greene & Gaynor is equally established.

Carvalho's testimony as to the other handwritings compared, was never successfully attacked or met, although it would have been easy to have met it with witnesses, if his conclusions were not correct.

Indeed, Carter himself, who must have known the handwriting of his own clerk, Connolly, admitted before the Court Martial that the body of the Anson M. Bangs' proposal for Contract 5811 was in Connolly's handwriting, and that in so filling out the proposal Connolly had violated the regulations (Army Regulations 1889, Section 629), but he claims he was not aware of it until the case came up. (Court Martial Record Vol. 18) pp. 4016-4017. (See prohibition in specifications. Book of Contracts p. 441, clause 14.)

Connolly was Carter's stenographer and confidential clerk, and Carter got him appointed on the Nicaragua Canal Commission when Carter was transferred to Savannah. Testimony of Carter (Court Martial Record Vol. 18), p. 4125. It is true that after the contract was awarded to him, Anson M. Bangs, Gaynor's brother-in-law, came down and signed the contract, No. 5811, himself. Testimony of Sterley.

But as we have already seen, all the disbursing checks went to Greene & Gaynor (*ante*, p. 210). Carter admits he delivered the checks to W. T .Gaynor (Court Martial Record Vol. 18), p. 4010, and they did the work. Testimony of Conant (Court Martial Record Vol. 4), p. 767.

In transmitting the abstract of proposals, Carter, in his letter to the Chief of Engineers, September 29, 1894, said:

> "The prices bid by Anson M. Bangs, of Fayetteville, N. Y. are lower than the work can be done for, but as Mr. Bangs is responsible, authority is requested to award the contract to him."

We see here that Carter makes excuse in advance allowing him to recommend higher prices in the future, as he did in the next contract, No. 6517, for Cumberland Sound, let October 8, 1896, to the Atlantic Contracting Company, when the prices were jumped from 57 cents to $1.10 per square yard for mattresses, and that too as the evidence shows (*post*, p. 215, *et seq.*) by suppression of competition. But was Carter honest in his statement that Bangs got the contract at prices less than the work could be done for?

E. R. Conant, a young civil engineer, Carter's assistant engineer, testified (Court Martial Record Vol. 4), p. 765, that he was in local charge under Carter in superintending the work under that contract at Cumberland Sound. That for the purpose of acquiring the information for his own knowledge (p. 791) he made at the time the work was going on, an estimate of the cost of the work and profits to the contractor, and his estimate showed the contractors had made a profit of $82,000. And this on a work for which the Government paid the contractor $159,097.10. Exhibit 177 (Shields).

Conant further testified (Court Martial Record Vol. 4), p. 766:

"Q. (You) Had actual knowledge of the facts?

A. Yes, sir.

Q. Had actual knowledge of the amount of labor that was necessary or was used in the contracts?

A. Yes, sir; and further, the weight of the cars of stone delivered on the works.

Q. You knew then all material that was put into place and the cost of it to the contractor, and the cost of the labor used in all branches of the work, and its final cost in place of all the work done under that contract?

A. As near as I could ascertain; I think I made a close estimate.

Q. And that was $80,000 (cost) upon a contract upon which $162,000 was paid the contractors?

A. I believe it was $162,000; that would have to be verified."

The actual amount paid was $159,097.10. See Exhibit 177 (Shields). Vol. 21

Conant had superintended the execution of the Twiggs contract, No. 5359, of 1893, at Augusta, and who had been made by Carter to apply the most rigid construction to the specifications to Twiggs' work (*post*, p. 321 *et seq.*) when he was put in charge of the Bangs' contract at Cumberland Sound was instructed by Carter (Court Martial Record Vol. 4), p. 788: Vol 4 p 1682

> "He told me that he didn't wish me to carry out that contract, or to build the fascines in the manner that I had just built them at Augusta.
>
> He told me the contractor had bid very low on that work, less than what it could be done for, and he made other remarks.
>
> That he didn't wish me—I cannot remember the words, I can give you the meaning—that he didn't wish the contractor pressed in that work."

Conant showed the estimate he had made to the contractors, asking if they could point to any item he had wrong or any item left out, and they told him it was a fair estimate. (Court Martial Record Vol. 4) p. 792. Vol 4 p 1634

CONTRACT NO. 6515 AT SAVANNAH HARBOR 1896, $1,005,000.

CONTRACT NO. 6517 AT CUMBERLAND SOUND, 1896, $2,350,000.

The above contracts were only advertised 22 days in the local papers and 9 and 17 days in the engineering papers. Exhibit 161 (Shields). The bids were advertised to be opened September 8, 1896.

The actual bidders for the jetty contracts were (see Defendant's Exhibit 24): Vol 26

For Savannah Harbor: Vol 26 P13240

P. Sanford Ross.
The Atlantic Contracting Company.
John L. Grim.

For Cumberland Sound: Vol 26 P13248

Jacob Friday & Sons.
John L. Grim.
Atlantic Contracting Company.

VENABLE'S TESTIMONY.

W. H. Venable, a contractor and large stone quarry man of Atlanta, went to Savannah about four or five days before the time for opening bids, for the purpose of bidding on the above mentioned two contracts. The difficulties he encountered in obtaining specifications from Carter will be referred to hereafter, under the head of "Suppressing Competition by Withholding Specifications." (*Ante*, p. 171.)

Venable testified (Shields Vol. 1), p. 161: Vol 23 P10259

> "I went to Savannah for the purpose either of bidding on the work *in toto*, or selling stone for the work to other parties."

An attempt was made to contradict Venable's statement on this point, by the testimony of John W. Rutherford, delivered over Government's objection (Shields Vol. 3), p. 2491, Vol 25 P12899 who testified that after Venable had testified in New York, that Venable had told him he never had intended to bid on this contract at all, but went down to sell stone to Captain Greene. Venable had never been questioned as to this alleged conversation with Rutherford, or afforded an oppor-

tunity to deny or explain it. The testimony was not admissible.

Conrad v. *Griffey,* 16 Howard, 38.

Venable made arrangements with McAlpin & Schley, local contractors in Savannah, by which they were to bid, and he would be their security, and supply the stone work, and when after much difficulty, he obtained the specifications, he prepared his bid. (Shields Vol. 1) p. 170.

Chilling Bidders.

Venable, who had been forced to disclose his identity in order to get the specifications, testified (Shields Vol. 1), p. 166:

> "I went to the office to get the specifications myself then. * * * Captain Carter ordered his clerk to prepare the specifications, and he asked me into the private office, and explained to me the work, and so far as the intracacies and difficulties of both works at Savannah and at Cumberland Sound. * * * He asked me if I understood the way that the money was to be paid, and that there was no appropriation yet made; that we had to execute the work whether we got the money or not, whether the cash was forthcoming or not; that the work had to go along in the way set forth in the specifications, and that it would require an equipment of at least $400,000 to do the work.
>
> Q. (By the Commissioner.) The contractor would have to have it?
>
> A. The contractor, and we had to state the number of boats and everything and the equipment, etc.
>
> That in regard to the Fernandina work we had to build a large tramway out.
>
> Q. (By Mr. Erwin.) Fernandina or Cumberland Sound?
>
> A. That was the same thing; that was the Cumberland Sound work. We had to build out a long tramway that would cost a good many thousand dollars, along as we deposited the stone; that the water was very rough, etc."

Vol. 23 P. 10566

Page 168:

"Q. Now what was the amount of the plant that Captain Carter said that the contractors who took the Cumberland Sound contract would have to have?

A. Both; that they would have to have an equipment of $400,000 for both Cumberland Sound and Savannah Harbor. That is, the equipment for both works covered an expenditure of about $400,000."

It appears otherwise from Greene and Gaynor's own records, that the equipment they put in for execution of the big 1892 contract at Savannah was only valued at $26,932.50. Exhibit 265, minutes of Atlantic Contracting Company. (Shields Vol. 1) p. 828, 829, 830.

Vol. 23 P. 10567

It further appears that no trestle had been required of Greene & Gaynor under the Bangs' contract of 1894 at Cumberland Sound, and that none was required or used by the Atlantic Contracting Company on this very contract of 1896 in which Carter told Venable it would be required. On the contrary, the work was carried on in 1896 just as it had been done in 1894 by use of the "multiple mat" launched from the deck of a barge. (*Post*, p. 365.)

And that the entire jetty was rebuilt in stone by Major Gillette without building any trestle. (*Post*, p. 459.)

Ed. Gaynor Awaits Venable at the Foot of the Stairs.

Vol. 23 P. 10567

Venable further testified (Shields Vol. 1), p. 169:

"As I left Captain Carter's office and arrived at the bottom of the stairway near the entrance of the building, my remembrance is I met Mr. Ed. Gaynor. (Page 183.) He (Ed. Gaynor) said that John would like to see me about the stone, and I wanted to see John as well as John wanted to see me."

Vol. 23 P. 10567

Page 169:

"Q. You met Edward Gaynor at the foot of the stairs? Did you have any conversation with him?

A. He asked me if we were boing to bid, and I told him I thought so, and I wanted to see Mr. John Gaynor about selling him stone. If I could sell it to him I preferred not to bid.

Q. Anything further?

A. He said I could see him; that he was up at the hotel, or I could see him and I did see him.

Q. The same day?

A. That same day, and we were at the same hotel together, Captain Greene, John F. Gaynor, and we all.

Q. Had you prepared a bid prior to seeing them or not?

A. I had just gotten the specifications is my remembrance.

Q. Just state the substance of the conversation you had with these gentlemen, Mr. John F. Gaynor and Mr. Greene, after you got up there?

A. Well, I told them I wanted to sell the stone to them. * * * We came to terms the night before the letting.

Q. Prior to your coming to terms with them did you make a bid?

A. I had prepared it, but I don't believe the man I was going to bid with had signed the papers. I had justified in the bonds required; my brother and I were going on the bonds and McAlpin & Schley, local contractors, were going to sign the bid, for us as bidders, and he and I justified in the required sum." ($250,000, Cumberland Sound Book of Contracts, p. 509.)

Vol 3 p 1056

Page 170:

"That night, Captain Greene said in the morning he would buy the stone of us and I drew up a contract which the next morning was signed by John F. Gaynor as president of the Atlantic Contracting Company.

Q. That was the morning of the bid?

A. That is my recollection, sir."

GREENE AND GAYNOR KNEW THAT THEY HAD SUPPRESSED ALL COMPETITION

Vol 3 p 1056-2

Venable further testified (Shields Vol. 1), pp. 183-184:

"Q. What occurred after that between you and Mr. John F. Gaynor; what conversation occurred with reference to the copies of the specifications which you had,

and which you had obtained from Captain Carter as you state?

A. Going up the steps of the DeSoto Hotel—

Q. On what date?

A. On the morning of the letting, I think it was, he said to me that he wanted my specifications—triplicate specifications that I had received, and which I was in process of preparing to be presented at 12 o'clock; *that he wanted to take* up those as he had the others.

Q. Had up what others?

A. The other specifications that he had.

Q. Who said that?

A. Mr. John F. Gaynor.

Q. I declined to give them to him because I said to him that I didn't want to vitiate my contract or do anything to make it illegal between himself and my firm."

Vol 23 P 1913

Venable further testified (Shields Vol. 1), p. 185:

"Q. Now did you have any conversation with Captain Greene just shortly after the letting of the bid in reference to the bid which Captain Greene had put in, or the Atlantic Contracting Company?

A. Yes.

Q. In reference to his having any other bid prepared for that day?

A. He said he had prepared a bid $200,000 less than the one he put in, and he had it in his pocket.

Q. What did he say about his intent to use it?

A. He said he had that in case anyone should slip in a bid, he intended to put in a lower bid.

Q. In case of what?

A. Anyone else there; any bidder unknown had put in a bid, that he would have put in the $200,000 less.

Q. (By the Commissioner.) Did I understand you to say that he had this bid in his pocket?

A. He had the triplicate bids in his pocket. He said: 'I have my other bid here, and I could have put that in if any stranger had come in to bid, $200,000 lower. I have had that done often.'"

Venable testified (Shields Vol 1), p. 177: Vol 23 P 1875

That one of the reasons which made him decide not to put in a bid was that he could not get sufficient information as to which of the three designs of mattress the engineer might take, so as to enable him to put in an intelligent bid.

Now although the specifications and the bids of the Atlantic Contracting Company required the furnishing of immense quantities of stone, specified as Classes 1st, 2nd and 3rd Granite, and 4th Class (Florida) Stone, and Venable testified (Court Martial Record Vol. 3) p. 673, 674, that he was to furnish to the Atlantic Contracting Company the stone for Classes 1st, 2nd and 3rd, on board the cars at the point of delivery at the following prices:

Savannah $1.50 per ton of 2,000 lbs.

Brunswick $1.75 per ton of 2,000 lbs.

Fernandina $2.00 per ton of 2,000 lbs.

The quantities of 1st, 2nd and 3rd class stone, stated in the specifications as intended to be used at the contract price let (See Defendant's Exhibit 24, Court Martial) were:

For Savannah Harbor.

1st Class Stone	$ 97,500
2nd Class Stone	97,500
3rd Class Stone	175,000
	$270,000

For Cumberland Sound.

1st Class Stone	$ 262,500
2nd Class Stone	393,750
3rd Class Stone	390,000
	$1,046,250
Total for both contracts	$1,316,250

This was a pretty big sub-contract which Venable expected to fill. But Venable testified (Shields Vol. 1) p. 186:

"Q. After the contract had been let to the Atlantic Contracting Company, did you furnish any stone under your sub-contract with Greene and the Gaynors?

A. I furnished very little of it.

Q. About how much?

A. Probably $1,000 worth.

Q. Was that all you furnished entirely for that contract?

A. Yes, sir."

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Indeed, Exhibit No. 180 (Shields) shows that there was no stone of 1st, 2nd or 3rd class used at all in the Savannah Harbor Contract for 1896, and none at all in the Cumberland Sound Contract of those classes except $9,813.59 stone of the 3rd class.

Vol 23 P 10585

Venable testified (Shields Vol. 1), p. 187:

"Having failed to get an order for the stone, I was impatient about it and I went to Savannah to see Captain Carter. Captain Carter stated to me that probably they had not arrived at such progress in the work to require the stone, and that I should see Captain Greene.

I saw Captain Greene; I came to New York and saw Captain Greene, and insisted I should be allowed to furnish stone, and he said as soon as they got ready for the large stone that I should furnish it, but they had made a change in the specifications so that not near as large a quantity of large stone would be used—I mean of the class that I was to furnish—would be used; *that they changed it to mattresses.* * * * He said that they would not use nearly the quantity of stone that was proposed to be furnished; they were going to use mattresses instead of it.

Q. Who did he say had decided that they would use more mattresses?

A. He said he had gotten that change made."

Vol 23 P 10586

(Page 188):

"Q. Were you ever called upon to furnish any more stone at all?

A. No, sir.

Q. I suppose you were prepared to furnish the stone, weren't you?

A. Yes, sir; I was prepared to furnish it and did not furnish it."

That Greene and Gaynor never intended that Venable should furnish it, see *post*, pp. 232-233.

The legerdemain by which Venable was bought off as a competitor with a sub-contract for stone was accomplished by Carter's putting in operation a clause in the contract specifications, which after stating the quantities of material expected to be used and upon which quantities the question of who is the lowest bidder is to be determined, then provides (Book of Contracts p. 497):

> "He (the engineer) will, if he thinks proper, be at liberty to increase or decrease the actual or relative quantities of all materials used, after due notification to the contractor, without any change in the contract prices."

Chilling Bidders, 1896 *Contracts.*

Mr. Frank A. D. Hancock of the firm of McAlpin & Schley, who had intended to bid on the contracts in connection with Venable Bros., testified (Court Martial Record Vol. 3), p. 662, that when he applied to Carter for copies of the specifications, Carter asked him:

> "If I applied as an agent. I said that I was a principal; he said 'that is all right,' because we are not issuing them to agents.'
>
> After that I think his first reference was to the Cumberland Sound work. He first asked me if I was familiar at all with the work, if I had been over it; I said I was not; he said:
>
> 'It is my duty to worn all prospective bidders that the work is of difficult character.'
>
> Then he referred particularly to the Cumberland Sound work, and said it would not be safe for any bidder to bid on it without first seeing the work and familiarizing himself with its character. He went on to say that it would be necessary to construct a trestle over the breakers, and that the character of the work was such that he estimated a $400,000 plant would be necessary to effect it, and he referred to the fact that no money would be available for a year, and a lot of the work would have to be done on the capital of the contractors, which would make a large capital necessary."

Notwithstanding that this was a personal application made for a copy of the specifications, Carter refused to give them except by letter, to complete the records of his office, he said, but when they came there was one copy only, while it was necessary to have three to bid. Carter knew this but Hancock did not. (Court Martial Record Vol. 3) p. 663.

The failure of Hancock to get the full set of three specifications necessary to bid, made it necessary for Venable to make the second effort to get the specifications, this time through Barrow & Osborne, an effort to get the specifications without disclosing his identity to Carter, which the latter circumvented. (See *ante*, p. 171, under head of suppressing competition by withholding specifications.)

The Other Bidders, 1896 *Contracts*.

The unsuccessful bidders for the 1896 contract for Savanah Harbor, No. 6515, were:

J. Sanford Ross of Jersey City, and
John L. Grim, of Philadelphia.

And unsuccessful bidders for Cumberland Sound No. 6517, were:

Jacob Friday & Sons, and
John L. Grim.

We have already demonstrated by the evidence that the P. Sanford Ross bids certainly up to the time of the 1896 contract were undoubtedly collusive. (*Ante*, p. 180.) That the same combination which this evidence indicates, existed between the dredging men to apportion the dredging contracts along the Atlantic Coast to a certain extent, existed between the jetty work contractors there can scarcely be a doubt if careful consideration be given to the bids in the various districts set forth in Defendant's Exhibit 24, Court Martial.

From the statements of Gaynor and of Greene to Venable after he had gotten Venable out of the way (*ante*, pp. 218-9) it is certain that they had no fear whatever of any serious competition from the bids of either P. Sanford Ross or Grim or Friday. And yet Venable testified that when they went down to the bidding, John Gaynor, Grim and Friday all drove down from the hotel in a cab together. (Shields Vol. 1) p. 185. The Friday's had the Charleston, S. C. jetty contract let September 23, 1892. The Winyaw Bay, S. C., contract opened November 7, 1894. (Defendant's Exhibit 24, p. 4 and 2.)

And as would appear from the letter of Jacob Friday from Charleston, October 8, 1897, and the affidavit of E. L. Friday, which Carter presented to the Board of Officers but which they refused to consider because the parties would not come before them for cross-examination, it seems that they were still located in Charleston in 1897 in contract work. Why did these men fail to appear and to submit themselves to cross-examination before the Board of Inquiry, or before the Court Martial or before the Commissioner in the Shield's hearing?

John L. Grim, of Philadelphia, and a Government contractor at other points, was the other bidder. He testified for the defense, that his bid was not collusive. (Shields Vol. 3) p. 2666.

But he did not apply for specifications until August 28, 1896, and they were not mailed to him until August 31st, just 8 days before the opening. Exhibit 165 (Shields).

He testified he came to Savannah about a week ahead, and then went away to Wilmington, Delaware, and then came back a day or two before the opening of the bids. (Shields Vol. 3) p. 2665. Unless Grim's bid was collusive, it is clear that his bid must have been based on the high priced log mattress which under the specifications the engineer had the right to choose, and not on the brush mattress.

He testified (Shields Vol 3), p. 2668-2670: That he was the Junior member of the firm of I. H. Hathaway & Co. which had built the stone jetties at the mouth of the St. John's River, Florida, in 1892. That that work was out on the bar and right over the breakers. That the mattresses were made of fascines lashed down with poles and wired, and were towed out one at a time and sunk singly.

By reference to Defendant's Exhibit 24, p. 12, in Court Martial, showing the bid of I. H. Hathaway & Co. for the St. John's River contract of 1892, and the reference therein to table 6 in same Exhibit, it will be seen that it is therein stated that the Hathaway mattress was "essentially the same as the 2nd design" Carter mattresses in the 1896 contract at Cumberland Sound.

Cumberland Sound is in the immediate vicinity of St. John's River, Florida, and the conditions are practically the same. Capt. Black's testimony (Board Record Vol. 2), p. 479. Yet the Hathaway bid for St. John's River bar was 75 cents per square yard for this 2nd design mattress. See Defendant's Exhibit 24, p. 12 (Court Martial). And yet Grim bids $1.15 for mattresses on the Cumberland Sound Contract in 1896. See Defendant's Exhibit 24, p. 10. (Court Martial.) It is very clear, therefore, that in bidding $1.15 for either of the three designs in the 1896 contract, Grim was not bidding on the brush mattress, the price for which, had been only 75 cents when put in place after being carried out to the breakers, one at a time and sunk singly, Grim's testimony (Shields Vol 3), p. 2670, but he must have been bidding like Schermerhorn "current prices" on log and brush mattresses.

Grim was in the condition of other bidders; he could not compete with the option reserved with a bidder who knew how the option would be exercised.

Duval and Rutherford.

The defense offered the testimony of two witnesses, John W. Rutherford and C. P. E. Burgwyn, prospective bidders who did not bid on the 1896 contracts.

John W. Rutherford contemplated bidding for the 1896 Cumberland Sound, in connection with Mr. H. R. Duval, the latter was to be interested with Rutherford in the contract if they got it. Testimony of Rutherford. (Shields Vol. 3) p. 2489.

This is the same H. R. Duval who made such strenuous efforts in 1897 to have Carter retained in the Savannah District, and who wrote the Duval letter (*ante*, p. 45). This is the same Duval who Carter testified put up as an act of friendship the $5,000 fee paid ex-Senator Edmunds for his review of the Court Martial trial, Carter afterwards giving him securities. Testimony of Carter. (Wyman Vol. 6) p 411, 412.

This is the same Duval who stated for Carter before the Board of Officers (Board Record Vol. 3), p. 759:

> "Q. Did you at any time hear any criticism of my conduct of that work?
>
> Duval—A. None whatever, nothing to affect you at all; nothing to injure you at all; I have heard complaints that you were unjust to your inspectors in being particular with them. * * *
>
> Q. If there had been any well-founded criticism, or criticism of any one man whose opinion was worth having, of the work, would you probably not have heard of it?
>
> A. Yes, because I was regarded as responsible for the work; it was I who took that work up through the various committees in Congress."

Now after Duval had made that statement to the Board there was found in Carter's letter press-book No. 8, p. 314,

from Box B 31, a letter from Carter to Duval dated Savannah, Georgia, November 29, 1896, in which the fact that there were charges made at that time as to the conduct of the work, is plainly stated. (Wyman Vol. 1) type. p. 224:

> "As to the Fernandina work: An examination of all work after it is in place will prevent absolutely any considerable discrepancies. Moreover my work has been supervised by men whose character is above reproach and as the slightest wrong doing would have to be performed under a conspiracy of all of my own employes, and the agents of the railway, I cannot credit the charges, since so large a conspiracy would not hold together but would be betrayed. But as the charges have been made, I beg that you will give me the names of the parties making such charges."

Carter testified (Wyman Vol. 9), p. 4482, that the charges referred to were:

> "That some man down in Fernandina told an employe of the road of which Mr. Duval was president, that some of my assistants had been allowing improper work to be done."

The question is not as to the truth or falsity of those charges, but as to the attitude of Mr. Duval who within the year in which such charges had been made to him, and repeated by him, could go before the Board and state that he had never heard of any criticism of Carter's conduct of the work.

Rutherford testified (Shields Vol. 3), p. 2482-3:

That he went down to Savannah to see about bidding on the 1896 work for Cumberland Sound (page 2467) only contemplated bidding on that contract.

Page 2480.

That he prepared a bid with a rate of $1.05 per square yard for mattresses. (The Atlantic Contracting Company's bid which got the contract was $1.10; see book of contracts, p. 523).

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Page 2480:

"In making my calculations for my bid, I paid very little attention to the mattress work at all, it being such a small quantity, and *bid merely the prices current at that time,* and bid in that way. I did not attach much importance to that. It was a great big contract for stone."

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Page 2481:

"Q. There was some 250,000 cubic yards of rock?

A. There was nearly double that, or treble that, I think. An enormous quantity.

Q. About 500,000 cubic yards of rock?

A. Yes, sir."

Vol 25 P 12878

Page 2470:

"I do not think the brush would amount to 15 per cent. of the entire amount of the bid."

Vol 25 P 12879

Page 2471:

That after his investigation he did not put in any bid at all.

Vol 25 P 12897

Page 2489:

That he notified Carter before the bidding that he would not bid.

How completely Rutherford was fooled is shown by the fact that from the time work was commenced in December, 1896, up to July 31, 1897, there had been put in at Cumberland Sound under Carter's orders (instead of 200,000 square yards of mattresses, the quantity stated in the specifications for canvassing bids), 446,102.41 square yards of mattress costing the Government $490,712.65. Exhibit 174 (Shields), and only 21,799.43 cubic yards of stone of all classes. Exhibit 180 (Shields).

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How the change in the quantities of the material actually used from those stated in the specifications for canvassing bids was a potent factor in defrauding the Government as well as a method of defrauding competitors in the bidding, will be discussed further (*post,* p. 302 *et seq.*)

Chilling Rutherford.

Rutherford testified (Shields Vol. 3), p. 2466, that when he went to see Carter to get information, Carter treated him very courteously and "discussed very fully the methods of procedure in construction. On account of the exposed situation it was going to be a very difficult piece of work and he asked me my opinion how I would proceed in the matter."

Page 2481:

> "I suggested the matter of building a trestle work out, transferring my cars from the main land over Cumberland through and to Cumberland Island, over there, and that was gone into in a considerable detail, and it was in that connection, the report of the Chief of Engineers, to the Secretary of War was brought out and we discussed that there."

Page 2467:

> "He then got down some reports of the Chief of Engineers to the Secretary of War, showing methods of construction adopted in California for a jetty, something similar to this, and I had not known at that time that anyone had been building in that way. We discussed then the additional cost of them to do that. Of course that came under the contractors—entirely under the amount that the contractor would bid to put in the work. It was dead work. He asked me after looking over the situation if I would come back and have a further discussion."

Now, whether Rutherford in that conversation first suggested the trestle to Carter or Carter suggested it to him, is immaterial.

Carter had told Venable (*ante*, p. 216) that the trestle costing many thousand dollars had to be built, and he had told Hancock the same thing. (*Ante*, p. 222.) As a matter of fact no trestle was built by Greene & Gaynor in the work, and Christie, Lowe & Heyworth, who rebuilt and completed the jetty in stone under Gillette, did not have to build or use a trestle. (*Post* p. 459.)

Rutherford further testified (Shields Vol. 3), p. 2469, that after this conversation with Carter, he went down to Cumberland Sound and examined the situation.

Page 2470:

"Q. Did you make any inquiries with reference to brush?

A. Yes. I drove over the country there, but I did not pay the same attention to brush as I did to stone, because it was a stone contract almost altogether."

Page 2471:

After an examination of the work, he did not bid.

Rutherford's Reason as Stated for Not Bidding.

Rutherford testified that his reasons for not bidding were (Shields Vol. 3), p. 2474:

"On getting back to New York and endeavoring to procure bond necessary to accompany the bid, I ascertained that on account of the conditions of the country at that time, it being immediately before the national election in 1896, that the financial situation was such that the parties who had actually promised to go on, reconsidered their determination and declined."

Now, Rutherford's testimony and Duval's are at variance. Rutherford testified (Shields Vol. 3), p. 2489: That his efforts to get the contract were in the interest of himself and Duval; that Duval was to be interested in the contract if he got it, and that it was Duval who notified Carter for him that he would not be a bidder.

Duval stated before the Board of Officers (Board Record Vol. 3), p. 750:

"In the matter of the contract for doing this work at Cumberland Sound, I have never done any of it, but I took it into my head that it would be a good thing for our railroad to do, as we had the terminal there and plant."

(Board Vol. 3), p. 751:

"Well, I abandoned that work because a number of

P. 230. Note.

Before the Court Martial Duval testified that the reason he did not bid, was that prior to the letting of the contract, he had effected an agreement with the Atlantic C. Co. to haul the stone, if the latter got the contract. (Vol. 7, p. 3193.)

contractors in Florida. such as Rutherford, and the Atlantic Contracting Company and another man by the name of Grim, were all patrons of ours and they all said they would haul the stone over our road, and our officers advised me to give that up and not come in competition with them. It was away out of my line, also; and then these men said they would all give me transportation, and I thought if I could do that, it would be better, and I knew well that if I lost it, I would make enemies of the men who would be very good patrons of the road; so I abandoned it."

Not a word before the Board did he utter that it was Rutherford who was acting for him and that he was to be interested if Rutherford got the contract.

Before the Court Martial Duval testified (Court Martial Record Vol. 15), p. 3308:

"Q. You mentioned some bidders that came to your office in reference to rates?

A. They didn't come to me, but to our Traffic Manager.

Q. Who made the inquiries?

A. J. W. Rutherford, Ross of Florida, the Gaynors and Greene, and I don't remember—several men who proposed to bid on that contract."

Still no intimation that Rurtherford and he were acting together.

Again (Court Martial Record Vol. 15), p. 3310:

"I wasn't quite sure it was desirable for us to do it from a financial standpoint, and, after conferring with my officers, we decided that we would not go into it.

Q. By financial standpoint, do you mean financial conditions of the country at that time?

A. No; about whether we could do the work cheap enough to make money on it."

Again (Court Martial Record Vol. 15), p. 3305:

"After it was decided, however, that this (railroad) rate of $1.00 and $1.50 should be sufficient, I didn't bid, and we settled upon it with the Atlantic Contracting Company, that $1 from Florida and $1.50 from Columbia would be the rate."

We have, therefore, from Duval, who according to Rutherford was interested with him and who acted for him in notifying Carter that Rutherford would not bid, a totally different reason for not bidding from that stated by Rutherford.

(1) According to Duval, it was not the financial condition of the country.

(2) It was partly because he feared they could not make money out of the contract if he got it.

(3) It was partly because he had obtained what he considered an agreement with the Atlantic Contracting Company, that if they got the contract, they would haul the stone at the prices he had named.

Now, the contract for Cumberland Sound, Contract No. 6517, was made with the Atlantic Contracting Company, October 8, 1896. Duval further testified (Court Mar. Record Vol. 15), p. 3305:

> "In October, I was in Washington. I had some business with one of the departments there, and when I returned to New York, I met Captain Greene of the Atlantic Contracting Company. He was waiting for me. He came in and said: 'We cannot pay you the rates we have agreed to pay you on stone, $1 and $1.50; we have a proposition from a firm of barge people here to carry this stone from New York at 49c a ton, and you will have to reduce your rates, else we will close with these people.'"

Duval then relates (Court Martial Record Vol. 15), p. 3305-6, how he appealed to Carter, who on November 7, 1896, advised him to hold to his rates as the New York barge scheme was impracticable.

Duval further stated before the Board of Officers (Board Record Vol. 3), p. 755:

> "Then afterwards, Gaynor assured Pennington (traffic agent of Duval's road) that all the stone would be hauled over our road; that he had a contract with the

company in Georgia that proposed to give him 100,000 to 150,000 tons of hard stone, but he would get out of that contract and give it up."

It will be remembered (*ante*, p. 170) that the Venables had obtained the very day of the letting of this Contract No. 6517, a sub-contract to furnish Greene & Gaynor all the stone except the Florida rock, to be used in the work, and that the Venables' quarries were situated near Atlanta, Georgia, so that the Venables' stone would not have been brought to Fernandina by Duval's road (Florida Central & Peninsular) nor from New York by barges.

There can be no question, therefore, that the sub-contract made with the Venables was merely a subterfuge to buy them off as bidders, and that from the very first Greene & Gaynor never intended to take their stone.

Moreover, Duval himself failed to grasp the fact that Carter's show of disinterestedness in helping him to get Greene & Gaynor promise to haul the hard stone over his road was merely playing with him; that Carter intended to do just what he did do, change the character and quantities of material, so as to leave all or practically all of the large stone out of the contract and substitute brush mattresses therefor. (*Post* p. 306 *et seq.*)

L. Y. Schermerhorn for Defense 1896 *Bidding.*

L. Y. Schermerhorn, of the American Dredging Company, Philadelphia, who was not a bidder for the jetty contracts in 1896, testified for the defense (Shields Vol. 35 p. 2022: That he only bid on dredging in 1896. That there was no collusion between him and Greene and Gaynor in putting in his bid.

Page 2063:

That he never prepared any bid for the 1896 contract except for dredging.

Page 2022:

That before putting his bid in for dredging, he visited Carter's office and obtained from Carter such information as he needed to make out that bid.

That Carter offered him facilities for visiting the work on the grounds.

Page 2022:

"Q. Did you inform him at that time on what part of the work you were going to bid?

A. I did not ; I gave him no intimation of any kind that I was going to bid at all."

Now this statement bears falsehood on its face—it cannot be true.

A contractor who had bid on a previous contract applies for specifications for a new contract about to be let, gets them, visits the Engineer's Office and obtains from the officer such information as he needs, to make out a bid for dredging, certainly gives that officer an intimation not only of the fact that he intends bidding but also of the character of the work upon which he is going to bid.

We have already commented on the testimony of this witness as to his bids under the 1892 contracts. (*Ante* p. 192, *et seq.*)

C. P. E. Burgwyn for Defense 1896 *Bidding.*

C. P. E. Burgwyn testified for defense (Shields Vol. 3), p. 2522:

That he bid only on the dredging work at Savannah in 1896 for the Virginia Dredging Company.

That this is the only bid he ever made in this district.

That he never did any mattress work as a contractor.

Vol 25 P 12935

Page 2527:

That he told Carter that he intended bidding on both the dredging and jetty work and did not tell him the contrary before the bidding.

Vol 25 P 12938

Page 2530:

In point of fact, however, that he did not want both.

Vol 25 P 12930

Page 2522:

That his company never had a mattress contract.

Can there be a reasonable doubt that Carter in his conversation with Burgyn sized him up sufficiently to know, that the dredging contract was as much as this bidder would bid on, and told Greene and Gaynor accordingly?

Certain it is, that having bought off Venable with the sub-contract, they both declared, in substance, they had the entire situation in their hands. (See *ante*, pp. 218, 219.)

SUPPLEMENTAL CONTRACT OF MARCH 17, 1897. COLLUSION AND FORGERY.

Vol 25 P 13300

Complainant's Exhibit 287, copied in record (Shields Vol. 2), p. 948, are Supplemental Articles of Agreement purporting to have been entered into between O. M. Carter, Captain Corps of Engineers, and the Atlantic Contracting Company, dated March, 1897.

This supplemental contract Carter attempted to put through by fraud, but failed. The agreement provides for giving the Atlantic Contracting Company, without competition, a contract for 2,000,000 cubic yards of dredging at Cumberland Sound, at the high price of 25 cents per cubic yard, or $500,000. This was attempted to be gotten in as a modification of the Atlantic Contracting Company $2,300,000 jetty con-

tract No. 6517, of October 8, 1896. The occasion for the attempt to make the change as we shall see, when we come to consider the engineering features of the case, was that Carter had substituted a brush construction of jetty for the stone jetty provided in the original project, and contracts, and that it had become evident in March, 1897, that if he carried out his brush construction (in which the tremendous profits to the contractors were to be made) that the gaining of harbor depth required to satisfy the people and the Government would not be accomplished, he attempted to save the face of things, and prevent exposure by devoting $500,000 to dredging the harbor for depth.

In construing the Statutes pertaining to this subject, it has been held that:

> "In case of expenditures under the River and Harbor bills, that Section 3709 of the Revised Statutes had been amended or modified so as to authorize the *Secretary of War*, if he sees fit to do so, to cause purchases (or contracts) to be made without advertisement."
>
> (General Orders and Circulars of Chief of Engineers, p. 45.)

In order to get the original contract modified or changed, Carter had under the law and regulations to submit it to the Secretary of War.

In order to accomplish that end, it was necessary (1) that Carter and John F. Gaynor draft and sign the supplemental contract, but at that time John F. Gaynor was not in Savannah as we shall presently see: (2) That Anson M. Bangs and Eugene Hughes, Syracuse, New York, bondsmen for the contractor in Contract No. 6517, should give their written assent to the modification of the contract, and (3) that the supplemental contract and assent of bondsmen to the modification, be sent to the Secretary of War for his approval.

Now, let us see how Carter surmounted these difficulties. Complainant's Exhibit 288, copied in record (Shields Vol. 2), p. 953, is the Assent of Sureties purporting to be dated March 18th, 1897, and purporting to be signed by Anson M. Bangs and Eugene Hughes, and their signatures purport to be witnessed by James C. Bogart, and Henry Smith.

Now, the original Supplemental Contract Exhibit 287, dated March 17, 1897, and the original assent of bondsmen thereto, Exhibit 288, dated March 18, 1897, are both in evidence and subject to inspection. Both these documents show that they were filed in the office of the Secretary of War on March 18th, 1897.

The Supplemental Agreement is signed by O. M. Carter with Michael A. Connolly, his confidential clerk as witness. It also is signed by John F. Gaynor, President, and purports to be signed by Wm. T. Gaynor, Secretary of the Atlantic Contracting Company.

David N. Carvalho, the handwriting expert, testified (Court Martial Record Vol. 9), p. 1948:

> "It is attested by Wm. T. Gaynor, as Secretary; that signature 'Wm. T. Gaynor' is a forgery, and forged and simulated and written by Michael A. Connolly."

He further testified (same page) as to the document purporting to be the assent of sureties. Exhibit 288 (Shields), or 310 Court Martial:

> "In my opinion and judgment, after a comparison of the handwriting of those signatures (Anson M. Bangs, Eugene Hughes, James C. Bogart and Henry Smith) with other signatures of the same persons whose names purport to be present here, and of the handwriting of Michael A. Connolly, I state the four signatures to be forged and simulated and written by Michael A. Connolly—the whole four of them."

J. W. O. Sterly (Carter's Chief Clerk) who does not claim to be a handwriting expert, but who was familiar with Connolly's handwriting, testified as to the signature James C. Bogart to Exhibit 288 (Shields Vol. 2), p. 951-2:

"Q. Whose handwriting is 'James C. Bogart' in, if you know it?

A. I would say it is in the handwriting of M. A. Connolly."

The fact that the signature of Wm. T. Gaynor, secretary, signed to the Supplemental Contract, and that the signatures of Anson M. Bangs and Eugene Hughes to the Assent of Sureties, and the signatures of Bogart and Smith as witnesses, were all in Connolly's handwriting, can be seen by any one by comparison of the genuine signatures of Wm. T. Gaynor, Anson M. Bangs, Eugene Hughes and M. A. Connolly, which are admitted in the record and are subject to inspection of the Court. The fact has never been contested or refuted as it might easily have been done if not conclusive, by the testimony of Wm. T. Gaynor, M. A. Connolly, Anson M. Bangs or Eugene Hughes, all of whom bear such close relations to Carter or Greene and Gaynor, that their testimony could easily have been obtained by the defense, either in the Court Martial trial, the Removal Proceedings against Greene and Gaynor, or the present Civil Proceedings. Indeed, as Carter had to admit, the Connolly forgery of the Anson M. Bangs proposal to contract No. 5811 (see *ante*, p. 212) it was useless to deny the forgeries equally apparent as to these papers.

But the fraud in the attempted letting of this Supplemental Contract, is shown independently of the forgeries, and by evidence which conclusively shows that Carter must have been cognizant of the frauds in the papers. Complainant's Exhibit 286 copied in record (Shields Vol. 2), p. 946. (Court Martial Exhibit 303, offered Court Martial Record Vol. 8, p. 1740) is Carter's letter to the Chief of Engineers dated March 17, 1897, and purporting to inclose the said Supplemental

Contract dated the same day, March 17, 1897, and recommending its approval.

Complainant's Exhibit 289, copied in record (Shields Vol. 2), p. 955, is a letter from O. M. Carter dated the same day, March 17, 1897, addressed to John F. Gaynor, New York, actually enclosing to Gaynor the Supplemental Contract (which is witnessed by Connolly at Savannah, and which was yet to be signed by Gaynor) and enclosing also the Assent of Bondsmen, the letter stating that this assent was "to be executed" by them, and telling Gaynor to sign his name to the Supplemental Contract, and take the papers to Captain Goethals at the War Department.

The letter is as follows:

"Savannah, Ga., March 17, 1897.

Mr. John F. Gaynor,
President The Atlantic Construction Company,
New York, N. Y.

DEAR SIR:

I enclose herewith, supplemental articles of agreement together with papers to be executed by your sureties to contract of October 8, 1896, assenting to such supplemental contract. Please sign the articles of agreement immediately and take them to Captain Goethals at the War Department.

Having consulted with your representatives here, I assume that the conditions of the supplemental articles are satisfactory.

Very respectfully yours,

O. M. CARTER,
Capt., Corps of Engrs., U. S. A.

(8 Enclosures)."

Now, this letter to Gaynor at New York, copied into Carter's official letter press book No. 2 (Cumberland Sound), p. 153, could never have been sent on March 17, 1897, to John F. Gaynor at New York. Nor could Gaynor have obtained the Assent of Sureties at New York or at the homes of the sureties at Syracuse or Fayetteville, New York.

Both documents show that they were filed in the War Department on March 18th. It would have been impossible to get the papers from Savannah to New York and have them executed there and returned to Washington for filing on March 18th. The conclusion is inevitable, that the letter of March 17th, although addressed to Gaynor at New York, was sent to him at Washington. In fact the use of the words "take them to Capt. Goethals" coupled with the fact that Carter's letter to Chief of Engineers, purports to enclose the very papers he encloses to John F. Gaynor to be executed, shows that Carter must have sent his letter to the Chief of Engineers directly to Gaynor, so that Gaynor could put the other papers when signed by him, in the envelope addressed to Chief of Engineers, and both to be delivered to Goethals.

Moreover, since Connolly signs in Savannah as a witness to the Supplemental Contract, and it is shown that he wrote in the signatures of Anson M. Bangs and Eugene Hughes, to the Assent of Sureties, and of James C. Bogart and Henry Smith, as witnesses thereto, and as this paper was forwarded by Carter to Gaynor and filed in the War Department on the 18th, these false signatures must have been put on before they left Savannah, and Carter must necessarily have known it, and so knowing it, he forwarded a forged document to Washington in aid of an attempt to award a $500,000 contract to Greene and Gaynor without competition.

There is no escape from the conclusion. Carter practically admits (Wyman Vol. 6), p. 278, that these signatures are forgeries, but makes no explanation except that he and Connolly are now antagonistic. And he claims the price 25 cents per cubic yard, was reasonable.

But this does not meet the case. It is true that this Supplemental Contract was disapproved by the law officers of the War Department, as the change proposed was not authorized by the Act of Congress appropriating the money for

the work (see endorsement on Exhibit 286). But that does not alter the damning facts shown in Carter's effort to award this contract by the means adopted. There was an appropriation afterwards made which became available in August, 1897, allowing for 500,000 cubic yards of dredging at the same place, and Captain Gillette testified he had a verbal offer from Rittenhouse Moore to do it at 10 cents per cubic yard (Court Martial Vol. 8), pp. 1754-5. A contract was awarded on competition for dredging at the same place by Major Gillette, to C. P. Goodyear, on September 25, 1900, at 16 cents per cubic yard (Wyman Vol. 6), p. 241. The point, however, is not so much as to whether 25 cents per cubic yard was reasonable or unreasonable. But that the criminal means knowingly used by Carter to award the contract without competition to Greene and Gaynor, conclusively shows their fraudulent relationship.

Fraud in Manipulations of Specifications

JOINDER OF THREE DESIGNS OF MATTRESSES TO BE BID ON AT ONE PRICE, AT THE OPTION OF THE ENGINEER.

ILLUSTRATIVE DRAWINGS'

Commencing with the large contracts let in 1892, and in subsequent contracts let, Carter introduced the novel feature of prescribing in the specifications three different designs of mattresses to be bid on at one price, the engineer reserving the right to select after the contract was let, which design he would use. See contracts 4820, 4960, 5811, 6515, 6517, etc. Vol. 22 p. 10125-10147-10305-10349-10373

For the purpose of illustrating and presenting to the eye the different forms of construction of these several mattresses, Captain Gillette had Mr. A. S. Cooper, Assistant Engineer, prepare certain sketches or drawings, which both Captain Gillette and Mr. Cooper testify, corectly represent, with the notations on them, the several forms of construction of these mattresses called for by the specifications (Shields Vol. 2), p. 927-8.

First design, "log and brush" mattress, Drawing Exhibit 192, corectly corresponds to this mattress (Testimony of Gil-

lette (Shields Vol. 1), pp. 452-472; Cooper, (Shields Vol. 1), p. 511.

Second design, brush mattress, Drawing Exhibit 190 correctly corresponds to this mattress. Testimony of (Shields Vol. 1), p. 511; Gillette (Shields Vol. 1), pp. 4 472.

~~Second~~ Third design brush mattress, Drawing Exhibit 19 rectly corresponds to this mattress. Testimony of (Shields Vol. 1), p. 512; Gillette (Shields Vol. 1), pp. 4 452-472.

ATTACK ON THE DRAWING.

Geo. Y. Wisner, expert for the defense, testified: That Drawing, Exhibit 192, was an "ideal" interpretation of the log and brush mattress called for in the specifications, and did not represent practical construction. (Shields Vol. 3) pp. 1707-8. The difference between the practical construction and the ideal is that on account of the irregularities existing in timber, the diameters would not be all average diameters of 12 inches as shown, and the logs would not lie so close together, making probably about a third less logs (Shields Vol. 3), p. 1707.

That Drawings 190 and 191 are "ideal" interpretations of the specifications and not a practical one (Shields Vol. 3), p. 1705. The difference between the ideal interpretation and practical construction is that the drawings represent the ends of the fascines as circles, whereas when put in place and loaded the fascines would be flattened where pressure was applied. (Shields Vol. 3) p. 1705.

Cross-examination:

Admits that Exhibit 191, better illustrated the form of construction of the 3d design mattress, than the actual photograph of these mattresses Exhibit 194. The photograph being the photograph taken by Captain Gillette of the multi-

ple mat put in by the defendants at Cumberland Sound (Shields Vol. 3), pp. 1732-3. That a man could not take the photograph and from it make a mattress of the 3d design. That the drawing is better to illustrate a working design (Shields Vol. 3), pp. 1759-60. That the method of drawing used in Exhibit 190, is a common way representing things to present the three sides of an object in one view (Shields Vol. 3), p. 1729. That Drawing Exhibit 190, is an ideal drawing of the second Design mattress. To make it practical, the fascines should be a little compressed where the binders rest on them. It is a fair representation of the construction of the Second Design for purposes of comparison with other designs (Shields Vol. 3), pp. 1730-1. The same thing applies to Drawing Exhibit 191 of the Third Design mattress (Shields Vol. 3), pp. 1731-2.

ADDITIONAL ILLUSTRATIVE DRAWINGS.

Exhibit 186 (Shields) is an ilustrative drawing of the "Log and Brush" Mattress, design in specifications for Contract No. 2744, September 1, 1884, let by Gillmore, Savannah Harbor, and repeated in several other contracts. Drawing proved (Shields Vol. 1), p. 451, tendered p. 472.

Exhibit 187 (Shields) is an illustrative Drawing of the Fascine Mattress Design in Supplemental Contract No. 3282, let by Gillmore, December 22, 1886. Proved (Shields Vol. 1), p. 451, tendered p. 472.

Exhibit 188 (Shields) is an illustrative Drawing of the fascine mattress design in Contract No. 4224, let by Carter November 5, 1890. Drawing proved (Shields Vol. 1), p. 451, tendered 472.

Exhibit 189 (Shields) is an illustrative Drawing of a "Pole and Brush" mattress, design in Contract No. 3890. Let by Carter January 16, 1889. Similar to Gillmore's second design in contract No. 2824, let Septemer 27, 1884. It was an

alternation design prescribed to be used at *option of contractor.* Drawing proved (Shields Vol. 1), p. 451, tendered p. 472.

JUMP OF 400 PER CENT IN THE COST TO THE GOVERNMENT OF FASCINE MATTRESSES IN 1891.

Captain Gillette, compiled and identified as Exhibit 193 (Shields), from the original contracts let in the Savannah District from 1884 to 1897 in evidence (See also Volume of printed contracts), a table showing the cost to the Government by square yard and by cubic yard, of the brush mattresses in the contracts let in the Savannah District.

Captain Gillette testified that the table was correctly made up from the contracts (Shields Vol. 1), p. 471.

This table Exhibit 193, shows the most startling results.

It shows that when considered by the *cubic* yard (which is the measure of material in a jetty) the contract cost price of fascine mattresses to the Government was jumped nearly 400 per cent in 1891, and to quite 400 per cent by 1897. In other words, if the work under these later contracts had been done perfectly in accordance with the specifications, the Government nevertheless would have paid at least four times as much for its material as it paid for the same material prior to 1891, or an addition of 300 per cent. to the cost. The ingenuity with which this was accomplished without attracting attention to the increase of cost on the face of the contracts, is a marvel in itself.

		Reference to Letters:					
		April 11, 1885—J. F. Gaynor to Carter (Shields, Vol. 1, p. 359). Vol 23 P 1075					
		April 14, 1885—Carter to Gillmore (Shields, Vol. 1, p. 360). Vol 23 P. 1075					
		April 17, 1885—Gillmore to Carter (Shields, Vol. 1, p. 357). Vol 23 P 1075					
		April 21, 1885—Gillmore to Carter (Shields, Vol. 1, p. 355). Vol 23 P 1075					
		April 23, 1885—Carter to J. F. Gaynor (Wyman, Vol. 1, p. 308) Vol. 23 P 1076					
3282	John F. Gaynor.	Supplemental Contract, Dec. 22, 1886.	Fascine M.	.....	12"	1.10	Exhibit 187. Vol 31
		Reference Letter Carter to Gillmore, Dec. 3, 1886 (Ct. Mar. Vol. 6, p. 1,226). Vol 4 P 1949					246
3890	Wm. T. Gaynor.	Contract of Jan. 16, 1889 (2nd design).	Pole & Brush.	.63	16"	1.42	Exhibit 189. Vol. 31
4224	John F. Gaynor.	Contract of Nov. 5, 1890 (Apron along training wall).	Fascine M.	.....	12"	1.40	Exhibit 188. Vol. 31
		——1891——					
4960	Atlantic Contr. Co.	Contract of Oct. 22, 1892.	Fascine M.	.95	9"	3.80	Exhibit 191. Vol 31
6515	Atlantic Contr. Co.	Contract of Oct. 8, 1896.	Fascine M.	.95	9"	3.80	Exhibit 191. Vol 31

Contract No.	Contractor.	CUMBERLAND SOUND.	Kind of Mattress.	Price per Sq. Yard.	Thickness.	Price per Cu. Yard.	Drawing Design Exhibit (Shields).
2824	Lara & Ross.	Contract of Sept. 27, 1884 (2nd design).	Pole & Brush.	$0.59	16"	$1.32	Exhibit 189. Vol. 31
3285	Anson M. Bangs.	Contract of Oct. 29, 1886 (2nd design).	Pole & Brush.	.47	16"	1.06	Exhibit 189. Vol. 31
		——1891——					
4572	John F. Gaynor.	Contract of May 4, 1891.	Fascine M.	.47	12"	1.05	Exhibit 187. Vol 31

HOW THE TRICK WAS PERFORMED.

The means used by Carter in jumping up the prices of fascine mattresses at one bound nearly 300 per cent. in 1891, without attracting notice to it on the face of the specifications, consisted of manipulating the specifications in the following ways:

(1) He changed the system of paying for fascine mattresses, so that whereas prior to 1891 (*post*, p. 250) they had been paid for by the fascines in them measured by the cubic yard; *i. e.*, a square yard of surface with a depth of 36 inches, he now advertised for bids for fascine mattresses by the square yard 9 inches thick.

(2) His next step was to join the two kinds of mattresses, the "Fascine" mattress, 9 inches thick, and the "Log and Brush" mattress in the same specifications, to be bid on at one price, per square yard, the Engineer reserving the right to select which kind he would take after the contract was let. So that whereas prior to 1891 the fascine mattress had cost the Government in the Savannah District only about one-half the cost of the "Log and Brush" mattress, and whereas outside bidders would not know which kind Carter might select, they would be compelled to bid the log mattress price. In other words, it forced up the price of the 9 inch fascine mattress to the price of the 18 inch "Log and Brush" mattress. The effect of this joinder was:

(a) By letting Greene and Gaynor know beforehand (see *post*, p. 271), that he would use all "fascine" mattresses in the work. They were given 50 per cent. advantage over other bidders even on a close bid.

(b) By putting in a clause in the contract applicable to both the "fascine" mattresses and to the "Log and Brush" mattress that:

> "No mattress will be accepted until properly placed in the work and secured there by a layer of stone of such

thickness, not exceeding (1) one to two (2) feet, as may be required by the Engineer Officer in charge.":—

He forced every out side bidder, if he calculated the cost of putting in "fascine" matresses at all, to calculate the cost on the assumption that each fascine mattress had to be constructed separately and sunk one at a time with its load of stone on it.

While he informed Greene and Gaynor beforehand that he would allow them to construct the mattresses eight or ten courses high (called for convenience the "multiple mat" construction), and put them in all together, with no stone between them, and placing stone only on the top mattress, and at the same time omitting large quantities of the binder poles called for in the separate mat construction. (See *post*, p. 271.)

Thus giving Greene and Gaynor an immense advantage over other outside bidders who had to base their bids upon the possibility or probability that Carter might call upon them to put in the single "fascine" matress or "Log and Brush" mattress, built separately, towed in place separately and sunk separately in the works with its load of stone on it.

(c) By using the methods to suppress competition by shortness of advertisement of contracts (*ante*, p. 124, *et seq.*), and withholding specifications (*ante*, p. 157, *et seq.*), he enabled them to get the contracts at exorbitant rates even for the "Log and Brush" mattresses.

(d) By actualy using not a single "Log and Brush" mattress in any of the contracts let after 1891, although specified in all the great contracts let by him after 1891, but electing to use all "fascine" mattresses, the contractor had his profits even at those exorbitant prices, on the amount of mattress work expected to be done as advertised, multiplied by the increased quantities of "fascine" mattresses used, 9 inches

thick, compared with the number of log mattresses 18 inches thick, which could have been used.

(3) By putting a clause in the specifications following the statement of the amounts of the different kinds of material he expected to use in the works, and upon which amounts of material the bids were to be calculated as a basis for "canvassing" bids, and awarding contracts, that (see p. 270 printed Volume of Contracts):

> "He (the engineer officer) will, if he thinks proper, be at liberty to *increase* or *decrease* the relative quantities of materials used, after due notification to the contractor, without any change in the contract prices.":—

He reserved a power, which he afterwards exercised in favor of Greene and Gaynor, of enormously increasing the quantities of fascine mattresses actually put in the works, over the amounts stated for canvassing bids, and decreasing the quantities of stone specified. Thus enormously increasing the profits of the contractors.

Illustrated by the big Contract No. 4960 of October 22, 1892, for Savannah Harbor, in which (see Exhibit 174 Shields), the quantity of fascine mattresses used for canvassing was 350,000 square yards, and the amounts actually used was 1,363,572 square yards.

The same clause was used, as we shall see presently (*post*, pp. 306-8) to award to Greene and Gaynor the 1896 contract for Savannah Harbor, although they were underbid by P. Sanford Ross on fascine mattresses, and by using 255,830 square yards of mattresses up to July 31, 1897—while he had specified only 200,000 square yards, he paid Greene and Gaynor more for the work actualy done under the contract, than if the contract had been awarded to Ross.

EVIDENCE REFERRED TO SHOWING HOW THE TRICK WAS PERFORMED.

PRIOR TO 1891. FASCINE MATTRESSES USED IN THE SAVANNAH DISTRICT WERE PAID FOR BY THE CUBIC YARDS OF FASCINES, USED IN MAKING THE MATTRESSES.

It is shown by the evidence, that General Gillmore, as evidenced by contracts Nos. 2933, 2934 and Supplemental Contract 3282, and even Carter (prior to 1891) as evidenced by Contracts 4037 and 4092, considered that when a bid was for *fascines* by the *cubic* yard, each fascine to be put in the works *singly*, that no extra price should be allowed for constructing the fascines into mats, and sinking the mats as a whole, when that was required.

This was because the extra materials (binding poles), was fully compensated for, by the less difficulty and labor involved in sinking at one performance, the largest number of fascines going to make up a mat.

This fact is brought out in the letter of John F. Gaynor to Carter April 11, 1885 (Shields Vol. 1), p. 359, wherein he contends that the price per cubic yard for the fascines, should be greater where they are put in "singly," than where they can be put in the work in mats.

Accordingly we find that prior to 1891, whenever the contracts required jettys or training walls to be built up of "fascines," the contracts provided that they should be laid singly

or made into mattresses and sunk as a whole, at the price of the "fascines" per cubic yard, used to make the mat. Thus:

(1) Gillmore's Contract No. 2933, December 5, 1884, with E. H. Gaynor, for Altamaha River provided that (see Volume of Contracts p. 23): Vol 22 p 9889

> "The fascines may, at the option of the Engineer in charge, be laid one at a time *or in mats*, except where the water is over 4 feet deep, when they must be made into mats."

The estimated quantity of fascines was 2,832 cubic yards. And the contract price was $1.17 per *cub.* yard for the fascines singly or in mats. The fascines were to be from 12 to 15 inches in diameter.

Construing this contract, General Gillmore wrote Carter on January 17, 1885 (Court Martial Record Vol. 19), p. 4481: Vol 19 p 4481

> "If I understand your explanation, there must be something wrong in the method of piling the fascines for measuring. Perhaps the brush is not bound together properly in making the fascines; perhaps not enough bands are used.
>
> At all events, the brush should be as compact in the piles for measurement, as it is in the mattresses."

(2) Gillmore's Contract No. 2934, December 5, 1884, with E. H. Gaynor, for Savannah River below Augusta (Volume of Printed Contracts p. 34), has precisely the same provisions. Vol 22 p 9909 The estimated quantity of fascines was 3,500 cubic yards. The price was 93 cents per cubic yard for the fascines singly or in mats. The fascines were to be from 12 to 15 inches in diameter.

(3) Gillmore's Supplemental contract with John F. Gaynor, No. 3282, of December 2, 1886, for Savannah Harbor, approved by the Secretary of War, which arranged for the substitution in place of a certain amount of the log mattresses contemplated in contract 3282, that a certain amount of fascines or fascine mattresses should be used, provided (see Volume of printed contracts, p. 56): Vol 25 p 9972

"(The fascines) shall be placed in the work singly or in the mats, in such places, quantities and manner, as may be directed by the engineer in charge.

When made into mats, the fascines shall be packed together, and secured by binding poles, joined by ties of wire or tarred rope, not more than 2 feet apart, the form, dimensions and method of construction of the mats to be such as the Engineer in charge may approve. For measurement, the fascines will be piled up either on shore or on a boat, where they can be accurately measured."

The estimated maximum quantity of fascines which might be required was 90, 000 cubic yards.

The price was $1.10 per cubic yard for fascines singly or in mats. The fascines were to be from 12 to 15 inches in diameter.

31 See Exhibit 187 (Shields) for illustrative drawing of this fascine mat. It is as Gillette points out, practically the same as Carter's third Design Fascine mat, for which he paid $3.80 per cubic yard at Savannah Harbor in Contract of 1892 and 1896, and $4.40 per cubic yard at Cumberland Sound in 1896.

(4) Carter's Contract No. 4037 of May 31, 1889, with C. C. Ely for training wall at Brunswick, Georgia (see Volume of printed contracts, p. 140), provided:

"They (the fascines) are to be placed in the work singly *or in mattresses,* in such places, quantities and manner as may be directed by the Engineer in charge.

When made into mattresses the fascines will be packed together and secured by binding poles joined by ties of wire or tarred rope, not more than two feet apart, the form and dimensions of mattresses and the method of their construction to be such as the Engineer in charge may approve."

The maximum estimated quantity of fascines which might be required was 4,000 cubic yards.

The price was $1.34 per *cubic* yard for fascines singly or in mattresses. The fascines were to be 12 to 15 inches in diameter.

The mattress required by the specifications, was practically the same as that of Carter's third design, for which he paid $4.40 per cubic yard under the 1896 contract at Cumberland Sound.

(5) Carter's Contract No. 4092, of September 13, 1889, with W. T. Gaynor, Savannah River, at Augusta, see Volume of Printed Contracts, p. 156, had a similar provision, and the estimated quantity of fascines was 2,000 cubic yards placed in the works singly or in mats. The price was 70 cents a cubic yard, singly or in mats.

(6) Carter's Contract, No. 4224, of November 5, 1890, with John F. Gaynor, for Savannah Harbor, provided under the head of "Pile and Brush Training Walls" (see Volume of printed contracts, p. 177), for a fascine mattress 15 feet wide to be placed as an apron along the training wall. After describing the fascines to be used, the clause provides:

> "There shall also be placed on the channel side of the training wall and close to the row of piles, on that side, a brush mattress 15 feet wide.
>
> This mattress shall consist of a top and bottom grillage of poles bound with a layer of brush fascines packed closely together. These mattresses must be sunk in proper place and weighted with stone, as the Engineer in Charge may direct.
>
> Proposals will be received for * * * the brush fascines by the cubic yard * * *
>
> It is approximately estimated that there may be required 35000 to 40000 cubic yards of brush fascines under these specifications."

The price was $1.40 per cubic yard for the fascines, whether singly or in mattresses. The fascines were to be 9 to 15 inches in diameter.

Complainant's Exhibits 105, 106, 107 (Shields), which are the tri-monthly reports of Geo. D. Meigs (now dead) the Assistant Engineer under Carter on that contract, but which reports are produced from the files of Carter's office and

identified by Mr. J. W. O. Sterley (Shields Vol. 1), p. 380-1, 2, 3.

These reports as pointed out in the testimony of Captain Gillette (Shields Vol. 1), p. 410 and 385, show that on that work at what is known as the "Duck Puddle Closing Dam" there was sunk the apron fascine mattress referred to in the contract. That is, an apron mattress 15 feet wide, along 532 feet of Training wall, on each side, or 1064 feet of mattress 15 feet wide. Moreover that the mattresses were paid for by the fascines in them at $1.40 per cubic yard.

This mattress is practically of the same design as Carter's third design in contracts Nos. 4960 of 1892, for Savannah Harbor and 6515 of 1896, for Savannah Harbor, in which Carter paid $3.80 per cubic yard for the fascine mattresses.

Carter's Contention.

Carter testified on the direct, however (Wyman Vol. 6), p. 283:

> "Prior to 1891 no brush fascine mattresses had ever been called for or paid for in the Savannah District."

This statement is contradicted by the contracts let prior to 1891, to which we have just referred. But on the next page (284) he contradicts his own statement, for he says:

> "I said none had ever been bid on or paid for, but a certain amount of fascine work was put in in mattress form by the contractors for which they received no extra pay.
>
> Q There had been a small number of bundles put in between a pole or two and fastened together and that had been called a mattress had it not?
>
> A. Yes, sir; anything that was bound together in raft or bundle form was called a mattress.
>
> Q. You have already testified that out of 100,000 cubic yards of fascines bought by the cubic yard, perhaps two and one-half or three per cent. of them had been put in with a rope around them, or tied to a pole,

without the contractor being allowed any extra charge therefor?

A. Yes, sir; there was a total of 107,500 yards of which 2750 yards had been put into the work in mattress or bundle form."

In the first place, Carter's efforts to minimize the amount of fascines contracted to be put in "singly or in mats" prior to 1891, won't do.

107,500 cubic yards of fascines (a cubic yard is one square yard of surface 36 inches deep) is equivalent to four times as many or 430,000 square yards of fascine mattresses 9 inches thick, which at $1.10, the price paid by Carter to Greene & Gaynor, at Cumberland Sound in 1896, is equivalent to $473,000.

In the second lpace, there is not a word in the specifications about using only two and one-half or three per cent. of fascines in mattress form.

In most of these contracts, the proportion of fascines to be made into mattresses, was to be regulated by whether the water was over 4 feet in depth, in which case they had to be made into mattresses, and for a less depth it was left to the option of the Engineer. (*Ante*, p. 251.)

The question is not whether Carter after the contracts were let, only required 3 per cent in fascines of the contractor, (of which there is absolutely no proof except Carter's assertion), but the question is on the prices on fascine mattresses as advertised and let in these contracts prior to 1891.

In the third place, the specifications of the fascine mattresses required in these contracts let prior to 1891, did not simply require "a small number of bundles put in between a pole or two and fastened together as Carter now claims." On the contrary, the description of the fascine mattress prescribed by General Gillmore in the John F. Gaynor Supplemental Contract No. 3282, of December 22, 1886, Savannah

Harbor (See Printed Volume of Contracts, p. 56) is as follows:

(Fascines.)

"The fascines shall be made of live brush well trimmed, the butts placed in alternate directions and closely choked. They shall be from 10 to 20 feet long; from 12 to 15 inches in diameter, and tied with from 4 to 6 bands of wire or tarred rope, and shall be placed in the work singly or in mats, in such places, quantities and manner as may be directed by the Egnineer in Charge.

(Mats.)

When made into mats the fascines shall be packed together and secured by binding poles, joined by ties of wire or tarred rope, not more than 2 feet apart, the form dimensions and method of construction of the mats to be such as the Engineer in Charge may approve."

See also similar provision in:

Contract 2933 Altamaha River 1884 Volume Printed Contracts, p. 23.

Contract 2934 Savannah River Augusta 1884 Volume Printed Contracts, p. 34.

Contract 3392 Savannah River Augusta 1887 Volume Printed Contracts, p. 84.

Contract 4037 Brunswick 1889 Volume Printed Contracts, p. 140.

Contract 4092 Savannah River Augusta 1889 Volume Printed Contracts, p. 156.

In Contract No. 4224, 1890, Savannah Harbor, the description of the fascine mattress is practically identical with Carter's later third design mattress.

If therefore, Carter let Greene and Gaynor put in fascine mattresses prior to 1891, of the flimsy construction which he now contends were put in, it was not because the specifica-

tions on which the competition was had and the letting was done, did not call for proper construction, but because he favored them after the contracts were let. But Carter's requirement (see *post*, p. 270) in 1885, that:

> "The brush will be carefully trimmed and the fascines will be made exactly as military fascines are made,"

shows that there was no such laxity in Gillmore's time.

It is true that in most of these contracts prior to 1891, the fascine mattresses specifically required only a half grillage of poles at the top and bottom, between which the layer of fascines were to be bound, but Carter never required Greene & Gaynor to use but a half grillage at the bottom and top of each course of the mattresses, he allowed them to put in in multiple form (see *post*, 347/354) even where the full grillage is prescribed in the specifications. So that there is no difference in the form of fascine mattress required prior to 1891 from that afterwards, which need be considered on that score.

1891, THE BEGINNING OF THE MANIPULATION OF THE SPECIFICATIONS.

CHANGE IN MANNER OF PAYMENT FROM CUBIC TO SQUARE YARD FOR FASCINE MATRESSES.

The next contract let by Carter was No. 4572, May 4, 1891, to John F. Gaynor, for Cumberland Sound (Exhibit 83, Shields) (Printed Vol. of Contracts), p. 209. It was a $97,500 contract, and was only advertised for 11 days in the Engineering papers prior to opening bids on April 15, 1891. Exhibit 161 (Shields). The advertisement purports, however, to bear date March 17, 1891, and is printed on the

specifications, and the latter laid the foundation for introducing radical changes into the whole system of contracts let in that district and accomplished most radical results.

An examination of the specifications will show that three designs of mattress were provided for in the specifications. Two of the designs were the same as the first and second design of "log and brush" mattresses under the Gilmore contract of 1886, No. 3285, either of which it is stated might be used at the option of the contractor, but the specifications then provide for a bid for "brush mattresses" which at the option of the engineer in charge might be substituted for the mattress of "logs and brush" previously specified.

The printed form of proposal calls for 50,000 square yards of "log and brush" mattresses at a price per square yard, and alternatively 50,000 square yards, of "brush" mattresses at a price per square yard.

This was the first time that brush mattresses made of fascines were let in the district, otherwise than at the price of fascines per cubic yard.

The contract was awarded to John F. Gaynor, at the rate of 99 cents per square yard for "log and brush" mattresses, or 97 cents per square yard for "brush" mattresses.

The particular design of brush mattress here prescribed is illustrated by Exhibit 190 Shields. Vol. 31

The specifications prescribe that the fascines composing the mattresses should be tightly compressed to a diameter of 9 inches. It will readily be seen that it would take 4 mattresses piled on each other to give a depth of 36 inches, and therefore 97 cents per square yard, the price at which the contract was awarded to Gaynor, was equivalent to $3.88 per cubic yard for fascine mattresses, or allowing for the extra fascine prescribed as a binder, spaced 6 feet apart, as Capt. Gillette does in his table, $3.49 per cubic yard.—in any event,

a great increase over the $1.10 per cubic yard paid by Gilmore under the supplemental contract of 1886, which has been referred to and to which reference will be made further on, and even over the prices which Carter had paid himself for similar mattresses under the previous contracts referred to. The vouchers for accounts rendered under this contract, held subject to inspection of the Court, show that all the mattresses used were "brush mattresses." Carter admits this (Wyman. Vol. 9) p. 4437-8.

In other words, after letting the contract to John F. Gaynor, Carter exercised the option reserved to the engineer and used all "brush mattresses" at 97 cents per square yard equivalent to $3.49 cents per cubic yard. Thus after jumping up the price of brush mattresses from what they had been over 300 per cent., he exercised his option in favor of the contractor.

PRIOR TO 1891, BOTH UNDER GILMORE AND UNDER CARTER, ONLY ONE DESIGN OF MATTRESSES WAS SPECIFIED FOR A CONTRACT, OR IF MORE THAN ONE DESIGN, THEN THE BIDDER HAD THE RIGHT TO BID ON AND PUT IN, THAT DESIGN HE THOUGHT CHEAPEST.

Referring now to the entire series of contracts let in the Savannah District from 1884 onward, let under Gillmore or under Carter (See printed Volume of Contracts), this fact is made to appear;

(1) That only one design of mattress was required to be bid on, as in contracts:

No. 2744, September 1, 1884, Savannah Harbor.

No. 3282, October 28, 1886, Savannah Harbor.

No. 3307, October 30, 1886, Brunswick.

(2) Or that if *two* designs of mattress were required to be bid on, at *one price*, it was "*at the option of the contractor*" as to which design he would put in, as in contracts:

No. 2824, September, 27, 1884, Cumberland Sound. Vol 22 P9
No. 3285, October 29, 1886, Cumberland Sound. Vol. 22 P9
No. 3890, January 16, 1889, Savannah Harbor. Vol 22 P996
No. 4224, November 5, 1890, Savannah Harbor Vol 22 P100
No. 4517, March 2, 1891, Brunswick. Vol 22 P10057

In every one of these cases where there were *two* designs of mattresses to be bid on, *at one price*, it was distinctly provided as in Contract 2824 (See Volume of Printed Contracts, p. 14):

> "Separate bids for each of the two designs for mattresses are not desired. One price only should be given in the proposals, and the price so stated will be understood as referring to either of the two designs which the bidder may elect to use."

Here also any person desiring to bid would know in advance precisely the kind of mattress he had to bid on, because he could elect to bid on that design which he considered the cheaper for him to supply. And thus the Government would get the benefit of the competition on each of the designs.

THE COMPARATIVE PRICES PREVAILING IN SAVANNAH DISTRICT FOR "LOG AND BRUSH" MATTRESSES AND FOR THE FASCINE MATTRESS PRIOR TO 1891.

We have already seen (*ante*, p. 250) that prior to 1891, fascine mattresses were paid for in the Savannah District by the cubic yard of fascines used in making them.

It is easily to be seen that if the fascines prescribed were 9 inches in diameter, it would take four fascines a yard in length laid side by side to make 36 inches or one yard of width in a mattress.

And if the fascines are piled up for measurement before making them into mattresses (as Gillmore wrote Carter they should be, see *ante*, p. 251) it is easily seen that a cubic yard of such 9 inch fascines will make at least 4 square yards of mattress.

And if the fascines were 12 inches in diameter, a cubic yard of fascines would make at least three square yards of mattress.

The foregoing is clearly brought out in the testimony of Major Gillette and also in the testimony of Col. Bixby, a witness for the defense (Wyman Vol. 8), p. 4191-2-3.

Deducing the square yard price from the cubic yard price for fascines for the several contracts in which the price was per cubic yard for fascines put in singly or in mats (See printed Volume of Contracts and *ante*, p. 250, *et seq.*) we have the following table:

COMPARATIVE PRICE OF "FASCINE MATTRESSES AND LOG MATTRESSES PRIOR TO 1891. (SEE VOLUME OF PRINTED CONTRACTS FOR PRICES.) Vol 22

Contracts.			Fascine Mattresses.			Log Mattresses.
			Price per Cubic Yard, 36″ Thick.	Equivalent Price Sq. Yard, 12″ Thick.	Equivalent Price Sq. Yard, 9″ Thick.	Price per Square Yard.
1884.	No. 2744.	Savannah Harbor				$0.47
1884.	No. 2824.	Cumberland Sound				.59
1884.	No. 2933.	Altamaha River	$1.17	$0.39	$0.29	
1884.	No. 2934.	Savannah River Aug	.93	.31	.23	
1886.	No. 3282.	Savannah Harbor				.38
1886.	Sup. 3282.	Savannah Harbor	1.10	.37	.28	
1886.	No. 3285.	Cumberland Sound				.47
1886.	No. 3307.	Brunswick				.55
1887.	No. 3392.	Savannah River Aug	1.27	.42	.32	
1889.	No. 3890.	Savannah Harbor				.63
1889.	No. 4037.	Brunswick	1.34	.45	.34	
1889.	No. 4092.	Savannah River Aug	.70	.23	.18	
1890.	No. 4224.	Savannah Harbor	1.40	.47	.35	.85

It is easily seen from the above table that prior to 1891 that where jetties were built up of "fascine" material, every 9 inches of mattress thickness, cost the Government on the average per *square yard* just one half as much as a square yard of the "Log and Brush" design of mattress had cost the Government on the average.

It is contended by the defense, however, that the smallest fascines used prior to 1891 were 12 inches, and not 9 inches, and that it would take more poles and labor to put in 4 mattresses 9 inches thick than to put in 3 mattresses 12 inches thick to get a cubic yard in depth, and that therefore the deduction of the equivalent price for the 9 inch mattress by dividing the price per cubic yard by 4 is not fair.

There are several answers to this.

In the first place, what we are endeavoring to show is that when Carter joined the "Log and Brush" mattress 18 inches thick, in the same specifications with the Fascine mattress 9 inches thick, to be bid on at one price, with option left to the engineer to choose which he pleased, he knew he was joining two kinds of things to be bid on at one price which previous to 1891 had cost the one considerably more than the other.

If we take the prices from the above table for 12 inch fascine mattresses which the engineer had a right to demand under the contracts, even then the prices of the 12 inch fascine mattresses cost only two-thirds as much as the log and brush mattresses, so that the objection to such a joinder in any great contract was as potent as in the other case. Merely a slight difference in the amount of the fraud, that is all.

In the second place, in Contract No. 4224, for Savannah Harbor, these two kinds of mattresses, that is the log mattress at a price by the square yard, and the fascine mattress 9 inches thick to be bid on by the cubic yard, were let in the same contract, and the price of the log and brush mattresses was over double the cost of the 9 inch fascine mattress.

In the third place, as we shall see when we come to consider the manner of executing the contracts let after 1891 (See *post*. p. 354) Carter allowed Greene and Gaynor to omit two-thirds of all the binder poles (called for in the specifications and upon which other bidders had to estimate their bids), from the fascine mattresses put in under such contracts. And he justifies this omission of material by the theory advanced in the testimony of his expert engineer witness, Geo. Y. Wisner, on the ground that the only engineering purpose subserved by the poles was to hold the fascines together until they were secured in the jetty. (Shields Vol. 3) p. 1751.

If Carter could allow the contractors to omit two-thirds of the binder poles without affecting the cost, as he claims, it follows it would not make any material difference in estimating the cost of a 9 inch mattress calculated from the price per cubic yard, that it would take one-third more binder poles than if calculated for 12 inches.

THE DIFFERENCE IN THE COST OF THE FASCINE MATTRESS 9 INCHES THICK, AND OF THE "LOG AND BRUSH" MATTRESS 18 INCHES THICK IS SELF EVIDENT.

Referring to the illustrative drawing of Exhibit 191 (Shields) of Carters first design mattress in contracts 4820, 4960, 5811, 6515 or 6517, and the description of this "Log and Brush" mattress in the contracts, it will be seen that it was composed of

(1) A raft of logs of average diameter of 12 inches.

(2) On the top of this raft was placed a layer of live wood brush sufficient to give 6 inches in thickness in the *finished work*, secured in place by poles lashed to the binders of the raft.

Mr. A. S. Cooper, Assistant Engineer under Gillmore and under Carter, testified (Shields Vol. I), p. 524, that it was de-

termined under Gillmore, that it took three feet thickness of brush laid on the raft before the rock was piled on in order to give 6 inches in the finished work.

That the expression "finished work" in that connection was handed down from the old Gillmore "Log and Brush" design. Its meaning is apparent from its use in the Charleston mat specification from Chief of Engineers reports of 1881, p. 1045, copied in Record (Wyman Vol. 8), p. 4205-6 as follows:

> "This mattress will consist of the raft or platform secured by binders, as above described for the first design, the same to be overlaid with stout brush to an average depth of 6 inches *estimated in the finished jetty.*
>
> The contractor will be allowed to make the layer of brush only 4 or 5 inches in average thickness, provided the sizes of the logs are correspondingly increased, so as to produce a mattress not less than 18 inches thick *in the finished work.*"

It will therefore be seen that every "Log and Brush" mattress had besides this raft of large logs, as much brush on it as it took to make one of Carter's third design 9 inch fascine mattresses, which latter as he allowed Greene and Gaynor to make them, consisted merely of 12 to 15 feet long bundles of brush laid side by side, held between binder poles (*post*, p. 276).

A. S. Cooper, Assistant Engineer under Gillmore, and under Carter testified that there was as much brush in the one as in the other (Shields Vol. 1), p. 528.

When it is seen that the "log and brush" mattress had to be towed out to the jetty and sunk one at a time (*post*, p. 393), while Carter allowed Greene and Gaynor to build up the fascine layers eight and ten courses high, one on top of the other, and sink them together, and paid them for each course as a separate mattress, the difference in the cost of the two things is so apparent that it needs no elaboration.

Perhaps the most impartial statement as to the relative cost of the two kinds of mattresses "Fascine" and "Log Brush," in the Savannah District, is to be found in the three cornered correspondence between John F. Gaynor, O. M. Carter, and General Gillmore in 1885, as it was written prior to any dispute on the questions now at issue.

John F. Gaynor then had in operation Contract No. 2744, of September 1, 1884, for Savannah Harbor.

That contract provided for but one kind of mattress:—A log mattress built of a raft of logs 12 inches in average diameter covered with a layer of live hardwood brush bundles compacted so as to give 6 inches in the finished work. A mattress "essentially the same as the first design mattress of Captain Carter" in specifications for Contract 4820 of September 16, 1892, and subsequent contracts, as is stated in Defendant's Court Martial Exhibit 24, p. 4.

The price of the "Log and Brush" mattress in contract No. 2744, was 47 cents per square yard. It became desirable to use a certain "Fascine" mattress in raising a jetty in the Savannah River known as "Fig Island Jetty." As the contract provided for only a "Log and Brush" mattress, it became necessary to modify the contract by agreement of parties in order to accomplish the change.

The following correspondence then took place (Shields Vol. 1). p. 359:

"Savannah, Ga., April 11th, 1885.

Lieut. O. M. Carter,
Corps of Engineers U. S. A.
Savannah, Ga.

Lieutenant—

In the matter of raising the Fig Island jetty or other jetties with brush and stone I beg leave to submit the following proposition:

I will furnish and put in place brush fascines fifteen

feet long and twelve inches diameter made of hard wood brush, put in the work in single bundles in such places, quantities and manner as may be required, for the price of log mats measurement of brush to be made on the barge before going into the work. This price to include leveling the jetty preparatory to the work and in general whatever may be necessary to make a good job.

This may seem a good price but in consideration of the facts, that it is low water work and that at low water there is great trouble in getting barges to it, that the bundles must be put in singly, that a great deal of stone must be handled twice, I cannot offer to do the work for a less price.

Yours respectfully,

JOHN F. GAYNOR,
Contractor.

Respectfully forwarded to Col. Q. A. Gillmore, Corps of Engs. U. S. A. As stated in my project of the 3d inst. the work on the Fig Island Jetty can not be done with the log & brush mattresses now used, nor with ordinary brush mattresses. If not done with stone alone, it must be done with fascines, & these must be placed on the jetty singly. Before this is done, the whole jetty must be levelled off. The major part of the work must thus be done at near low water.

I think that a fair equivalent for log and brush mattresses, considering the circumstances of construction, would be fascines 15″ in diam. instead of 12″ as proposed, the rest of the proposition to stand as at present.

It will be better to accept the proposition as it stands than to use stone alone.

The 'other jetties' mentioned herein, should be construed to include the closing dams along the river.

O. M. CARTER,
1st Lt. Corps. of Engs. U. S. A."

Vol 23 p. 1075

(Shields Vol. 1) p. 357:

"New York, Apl. 17, 1885.

1st Lieut. O. M. Carter
Corps of Engineers U. S. A.
Savannah, Ga.

Sir:

The letter of Mr. John F. Gaynor of the 11th inst. with

your indorsement of the 14th has been received. It is impossible for me to recommend the acceptance of Mr. Gaynor's proposition, as the fascines which he proposes to furnish are not a fair equivalent for log and brush mattresses which the contract call for and which the fascines are intended to replace. They amount to only two-thirds of such an equivalent as I understand it.

The first four paragraphs of the specifications are quite explicit with respect to the kind of work that is to be done, and the materials that are to be used in doing it. The 'building up of dams, wing-dams and training walls is to be continued with successive courses composed of log and brush mattresses overlaid with rip rap stone.' I think the Secretary of War can legally authorize the omission of the logs and the substitution for them of an equal volume of other material as good as the logs, and at the price of the logs. The proper way is to substitute bulk for bulk, that is a cubic yard of fascines for a cubic yard of log and brush mattress. Each square yard of mattress measures 1/2 cubic yard (3′ x 3′ x 1-1/2′). The fascines should be piled up and measured before going into the work, to be paid for in the work at the price of two square yards of mattress (94c) for one cubic yard of fascines. This is a good remunerative price for fascines in the work, and it seems to me that Mr. Gaynor ought not to hesitate a moment to accept this solution of his difficulty. He can of course furnish the contract mattress if he prefers it. The fascines will be reduced in thickness by Consolidation, much more than the mattress. It will be necessary, I think, to put and secure some pole binders over the fascines before the stone goes on.

You are requested to put on the minimum quantity of stone, consistent with the security of the work, and to report to this office the quantity you deem necessary.

You will please show this communication to Mr. J. F. Gaynor, and furnish him with a copy thereof if he desires it.

If he accepts my view of the matter telegraph me to that effect and start the work at once without waiting for further instructions. If he does not accept let the work go on with the log and brush mattresses as described in the specifications, in preference to the modi-

fied mattress with larger logs and less brush recently authorized. The larger logs make a more open dam.

Very respectfully,
Your obd't serv't

Q. A. GILLMORE
Colonel of Engineers Bt. Maj. Genl. U. S. A."

(Shields Vol. 1) p. 355:

New York, Apl. 21, 1885.

1st Lieut. O. M. Carter,
Corps of Engineers, U. S. A.
Savannah, Ga.

Sir:

I have had a conversation with Capt. B. D. Greene on the question of using fascines on the Fig Island jetty, and have concluded to modify my previous instructions in relation thereto. A serious objection to the use of brush in place of logs is there more perishable nature unless constantly submerged, and the higher they are above low water level the more serious the objection becomes. Up to high water level they would decay almost entirely in about three years. They are therefore, under such circumstances altogether a temporary device, to be resorted to only under a controlling necessity, and to the smallest possible extent. Under these restrictions brush fascines 15 feet long and 9 to 12 inches in diameter at the bands or lashings, may be used; each fascine to have the same diameter at the several lashings, and to be thoroughly choked, after the best method of making fascines for military purposes. The fascines to be suitably piled on scows for measurement, and to be paid for in the work at the rate of $1.20 per cubic yard. These fascines will be used in such amounts as may be necessary to level off the top of the jetty and put it in condition to receive a course of mattresses. Smaller fascines or bundles of brush, at the same price, may be used for stopping up holes, &c., where the 15 ft. fascines cannot be advantageously employed. After the jetty is leveled up a course of mattresses and stone 15 ft. wide will be put on, and the mattress may be either that described in the Contract, or a mattress 18 inches thick made of fascines at the contractor's option, and at the contract price. I greatly prefer the contract mattresses

on account not only of its greater durability, but because it will maintain, with a moderate shrinkage, its original bulk in the work which the fascines will not.

Very respectfully,
Your obd't Svt

Q. A. GILLMORE
Colonel of Engineers, Bt Maj. Genl. U. S. A."

Vol II P 5308
(Wyman Vol. 1) p. 308:

"Apr. 23 5.

Mr. John F. Gaynor,
Savannah, Ga.

Sir:

Referring to my letter of the 20" inst. I have to notify you that the fascines will be made from nine (9) to twelve (12) inches thick, instead of from twelve (12) to fifteen (15) as therein mentioned.

The brush will be carefully trimmed. and the fascines will be made exactly as military fascines are made.

Very respectfully,
Your obedient servant,
(Signed) O. M. CARTER,
1st Lt Corps of Engrs. U. S. A."

We see therefore that in his letters of April 17 and 21st, 1885, Gen. Gillmore clearly states the relative values.

Fascines put in singly he allows for at $1.20 per cubic yard. But he required the substituted fascine mattress should be 18 inches thick to be allowed for at the same price as the "Log and Brush" mattress specified in the contract. In other words, Gillmore estimated that it took two of Carter's fascine mattresses each course 9 inches, to equal in value one log and brush mattress.

We see therefore, that when Carter joined a 9 inch fascine mattress with an 18 inch log and brush mattress to be bid on at one price, he did so with the full knowledge that the one had been twice as costly as the other through a series of years, but in the face of the opinion of his predecessor in office given in writing to him that the one ought to cost twice the other.

CARTER INFORMS GREENE AND GAYNOR WHICH OF THE THREE DESIGNS THEY SHOULD USE.

Carter claimed before the Board of Inquiry, however, that he informed the bidders *orally* that the mattresses he would use in the works would be all of the third design (the fascine mattress), except a few of designs No. 1 and No. 2. (Board of Officers Record Vol. 1) p. 225. (Board Rec. Vol. 2), p. 464-5:

> "I intended to use one of those types, and of that all those bidders had been informed."

We may conclude, therefore, that he told Greene and Gaynor. But as we have just seen, he declined to tell P. Sanford Ross in the 1896 letting, and he refused to tell Burgyn. (*Post*, pp. 296-7.)

Venable was unable to find out which kind he would use. (Shields Vol. 1) p. 169. It was one of the reasons which influenced him not to bid. (Shields Vol. 1) p. 178.

Carter stated before the Board, that the bidders who asked him were told that he would use all third design mattresses except a few of the first and second designs, and that the bidders had the guarantee of his honor to that effect. (Board Record Vol. 1) p. 226.

"Q. Suppose you were ordered away or should die?

A. He would have the interpretation of the specifications as given by me.

Q. Would you consider that binding as a business proposition?

A. The moral enters into this."

NO "LOG AND BRUSH" MATTRESSES USED IN THE SAVANNAH DISTRICT AFTER 1891.

Arthur S. Cooper, Assistant Engineer under Carter on that work, testified (Shields Vol. 1) p. 518, that there was nothing but fascine mattresses put in the Savannah Harbor work

under the big contract of 1892, No. 4960. Carter testified to the same thing (Wyman Vol. 6), p. 151.

Cooper further testified that nothing but fascine mattresses were put in under the 1896 contract No. 6515 for Savannah Harbor (Shields Vol. 1), p. 512. That (p. 511) no "log and brush" mattresses were used in that contract. The same is shown in Complainant's Exhibit 368 (Shields), compilation of the tri-monthly reports for 1896, contract No. 6515, Savannah Harbor; by Exhibit 369 (Shields) compilations of tri-monthly reports for 1896, No. 6517, Cumberland Sound; by Defendant's Exhibit 150, compilation of the tri-monthly reports for 1892, contract for Savannah Harbor, and by all the tri-monthly reports, for said contracts held subject to the inspection of the court. It is shown by the vouchers listed in Exhibit 216 (Shields) in evidence for all the work done for every contract from May 4, 1891, to the end that there was never a log mattress paid for under any contract from May 4, 1891, to the end of Carter's work in 1897.

It is admitted by Carter that no log mattress design was put in in any of his contracts after 1891 (Wyman Vol. 9), p. 4438.

MAJOR GILLETTE'S TESTIMONY AS TO THE RELATIVE COST IN SAVANNAH DISTRICT OF THE SECOND AND THIRD DESIGNS OF MATTRESS JOINED BY CARTER TO BE BID ON AT ONE PRICE.

Captain Cassius E. Gillette, who succeeded Captain Carter at Savannah, and who is sufficiently qualified as an expert (Shields Vol. 1), pp. 391 to 399, testified (Shields Vol. 1), pp. 412, 413, 450, 459, that there was 10 per cent. more brush material in Carter's second design fascine mattress, than in Carter's third design fascine mattress, and that the specifications for the second design called for more particularity of construction, so that for the reason stated, the cost of the second design Carter mattress would be at least 25 per cent. more costly than the first design.

P. 272 Note

*Col. P. C. Hains, Division Engineer testified that there would be considerable difference in the cost of the three designs of mattresses in Carter's contracts of 1892 and that all bidders not informed outside of the specifications would have to bid on the most costly type. (Vol. 2, p. 681-2.) Col. Bixby, witness for defense, says, he would expect a lower bid for the 3rd than for the 2nd design mat. (Vol. 8, p. 8662.)

This estimate was not made on the basis of treating each 9 inch layer of fascines in Carter's "multiple mat" as a separate third design mattress, as Carter treated them in paying Greene & Gaynor, but was made on the basis of design of mattress being put in singly and sunk with its load of stone on it, as prescribed in the specifications.

CAPTAIN BLACK'S MATTRESS, CARTER'S (SECOND) DESIGN.

Indeed, Carter's second design fascine mattress (Contracts 4820, 4960, 5811, 6515, 6517) was really borrowed from the specifications of Capt. W. M. Black, who had experimented with it in the Florida District at the mouth of the St. John's River, adjoining Cumberland Sound, under the contract with R. G. Ross, let November 5, 1888, at 74 cents per square yard. (See Defendant's Court Martial Exhibit 24, p. 11.)

In contract let to I. H. Hathaway & Co., let October 15, 1892, for work at same place, 22,000 square yards of same design of mattress was let by Major J. C. Mallery at 75 cents per square yard. (Defendant's Court Martial Exhibit 24, p. 12.)

Captain Black stated before the Board of Officers (Vol. 2), p. 479:

> "The cost of the second design of Captain Carter's should have been practically the same as the cost of the design used on the St. John's River."

John L. Grim, a witness for the defense, testified he was a member of the firm of I. H. Hathaway & Co., who had that contract in 1892, on the St. John's River, testified (Shields Vol. 3), p. 2670, that under that contract, the Black mattresses "were taken out one course of mattress at a time and sunk with stone."

That (p. 2669) these single course mattresses had to be carried out to the bar one at a time and sunk "over the breakers."

What had to be done in the placing in the jetty of one of these second design fascine mattresses is thus described by Captain Black (Board of Officers Record Vol. 2), p. 478:

After describing the construction of the mattress practically the same as Carter's second design and in which he says that the mattress was constructed of

> "a closely compacted layer of brush fascines, which were made so that the fascines should be continuous for the entire length of the mattress."

He then says:

> "The mattress was made on ways close to the shore. When ready for placing, which would depend upon the state of the weather and the stage of the tide, the mattress was launched as short a time as practicable before the time of placing in the jetty for the reason that the free flotation was so exceedingly small that the mattress had to be held up on the water by attaching it to barges on the sides, or by placing floats over it.
>
> It was then taken out, swung in place over the jetty and lowered away, being covered with stone as it was being lowered."
>
> "Q. Was it the invariable custom to sink these mattresses separately and cover them with stone?
>
> A. Invariably.
>
> Q. Do you remember what the cost of such a mattress per square yard was in place?
>
> A. Yes, the cost of construction on shore was from 50 to 55 cents; the cost in place ranged in the neighborhood of 60 to 65 cents."

Carter's mattresses in Contract 6517 at Cumberland Sound in 1896, cost the Government $1.10 per square yard. The difference in the cost of this second design or "Black" mattress, from what ought to have been the cost of what Carter called his third design mattress, where he allowed them to be piled up 8 and 10 courses high, and carried out and sunk in multiple form at one time, with stone only on the top course, is manifest. (See *ante*, p. 264.)

The Continuous Fascine.

It was not alone, however the difference between sinking the second design mattresses "singly," and sinking the mattress made of the third design, "in multiple," which made the vast difference in the cost of the second design, or "Black" mattress, from the cost of a "layer" of Carter's "multiple" mat.

While Carter's specifications for his second design, just like Black's, called (see Volume of Printed Contracts, p. 266) for mattresses built up of brush fascines so constructed that:

> "The brush must be carefully laid so as to break joints and to make a continuous fascine extending completely across the mattress";

and the mattress widths were given (p. 267-8) as in general from 60 to 100 feet in width, yet Carter so construed the specifications for the third design, that he allowed Greene & Gaynor to build up these multiple mats of bundles of brush only 12 to 15 feet in length, so as to be of convenient lengths to be hauled out of the woods in wagons, and laid into the multiple mat, end to end, to reach across the mattress. Thus avoiding the trouble and expense of making the continuous fascine 100 feet in length at the shore where the mattress had to be constructed.

THE CONTINUOUS FASCINE COULD NOT BE CONSTRUCTED AT THE BRUSH CAMPS.

All the witnesses for the defense (men engaged on the work), questioned on the point, testify that with the brush camps situated as the average brush camps were, that as a practical question the 50 or 100 foot continuous fascine, such as were prescribed in Carter's second design mattress, could not be constructed at brush camps and transported or hauled to the wharf for laying into mattress. That the brush

would have to be hauled to the wharf and there made into fascines.

Testimony of Ford, witness for defense (Shields Vol. 3), p. 2560.
Testimony of Connell, witness for defense (Shields Vol. 3)p. 2626.
Testimony of John H. Gaynor, witness for defense (Shields Vol. 3), p. 2692.

As actually made by the defendants, the brush was cut and made into bundles at the brush camps, and were hauled to the wharf on a wagon, unloaded onto the barge, and laid into the mattress just as they were. Testimony of Connell for defense (Shields Vo. 3), p. 2624.

The length of the bundles as made at the brush camps were according to the testimony of these foremen as follows:

W. M. Connell, 15 to 17 feet (Shields Vol. 3), p. 2617.
John H. Gaynor, 15 to 16 feet (Shields Vol. 3), p. 2691.
T. F. Gaynor, 15 to 18 feet (Shields Vol. 3), p. 2581.
Campbell Ford, 12 feet (Shields Vol. 3), p. 2558.
John McGiffen, 8 feet (Shields Vol. 3), p. 2076.

This difference in construction of fascines as Carter allowed them to be put in, as conforming to the third design, from the continuous fascine prescribed for the second design, in the specifications is as Captain Gillette points out (Shields Vol. 1), p. 450, enough to make a great difference in the cost of the second and third designs, and he estimates this difference as at least 25 per cent. Colonel Bixby, witness for the defense (*post*, p. 277), also says it ought to make a considerable difference.

BIXBY WINYAW BAY MATTRESS.

This second design mattress made with fascines constructed of brush laid so as to break joints, was used by Colonel Bixby, also at Winyaw Bay, S. C., but neither he nor Black joined it with any other design to be bid on at one price.

Colonel Bixby let two contracts at Winyaw Bay, S. C.,

for small amounts of this second design mattress as follows (Defendant's Court Martial Exhibit 24, p. 1):

1889, To J. S. Howell, 25,000 sq. yards mattress at 57½ cents.

1890, To W. T. Gaynor, 50,000 sq. yards mattress at 70 cents.

Colonel Bixby testified that J. S. Howell never put in any mattresses at all under his contract. He failed to put in the sheet piling within the time prescribed, and on Bixby's recommendation, the contract was cancelled. (Bixby cross-examination, Wyman Vol. 8) p. 4147-8.

The work was then let to W. T. Gaynor as above.

Colonel Bixby testified (Wyman Vol. 8), p. 4237, under cross-examination, that under his contract, he required the mattresses to be constructed with fascines 60 to 90 feet in length, running continuously across the mattress.

He testified (Wyman Vol. 8), p. 4239, that if the contractors were allowed to put in the fascines only 12 to 15 feet long:

> "It ought to make considerable difference in the cost, it depends altogether on the cost of labor and local surroundings."

Colonel Bixby further testified (Wyman Vol. 8), p. 4236:

> "The Winyaw Bay mattresses could not well be laid in place at Winyaw Bay, on top of each other at once, they could not be put in together, they would have to be laid separately."

The work at Winyaw Bay, cross-examination of Colonel Bixby (Wyman Vol. 8), p, 4274, was the construction of a great stone jetty. The mattresses specified were simply a layer of mattress 10 inches thick, on which was placed a layer of stone 18 inches thick as a foundation. Upon this was placed heavy stone until the jetty was built up 6 feet above low water.

We can readily understand why it was that Colonel Bixby's

specifications. (Vol. 18, p. 8657.) He testified: "It ought to make a considerable difference in cost." (Vol 18, p. 8651.)

contract called for mattresses to be put in and bid for by the square yard. They were not to be used as Carter used them to build up a jetty by piling one layer of mattress on top of another. The mattress was used merely as a foundation layer to keep the stone from sinking into the sand.

The second design fascine mattress used by Captain Black on the St. John's River, Florida, was also placed only as a foundation course of mattress.

The defendants have cited the fact that Major W. S. Stanton who was a member of the Court Martial which convicted Captain Carter, let a contract for Winyaw Bay, S. C., October 20, 1892, to C. G. Bochman (see Defendant's Court Martial Exhibit 24, p. 1) for 5,000 square yards of mattresses at $1.05 per square yard, or $5,250. ~~It does not appear what kind of mattress this was~~. But it does appear that the whole contract was for from $60,000 to $70,000 of work. That there was 22,500 tons of stone required in the same contract, and that Bochman got the contract by so sufficiently underbidding the others on the stone, that his high price on the small quantity of mattresses used, made no difference in the aggregate. In fact it appears (Defendant's Court Martial Exhibit 24, p. 1) that another bidder bid only 80 cents per square yard for the mattresses, but got left by bidding too high on the stone.

CARTER ADMITTED BEFORE BOARD OF OFFICERS, THAT HE HAD "MODIFIED" THE CONTRACT BY ALLOWING SHORTER FASCINES, BECAUSE THE LONG FASCINES CAUSED DELAYS IN THE EXECUTION OF THE WORK.

In Contract No. 5811, for Cumberland Sound, 1894 (Volume of Printed Contracts), p. 447, the mattresses were specified to be in general from 30 to 100 feet in width, and the 39th clause of the specifications required the fascines to be from 30 to 100 feet in length.

Colonel Bixby, a witness for the defense, under cross-ex-

P. 278. Note

*Carter testified before the Court Martial that the provision in the Cumberland Sound contract of 1896, No. 6517 that the fascines must be from 30 to 100 ft. in length was a mistake of his clerk in writing out the specifications. (Vol. 8, p. 3924; Vol. 18, p. 8744.) But the same provision is in the following contracts:

No. 6515 Savannah Harbor of 1896 fascines	30 to 100 ft.
No. 6049 Darien Harbor, etc., of 1895 fascines	30 to 100 ft.
No. [illegible] Cumberland Sound of 1893 fascines	[illegible]

amination, testified as to this contract (Wyman Vol. 8), p. 4248:

"Q. Then if the engineer allowed the fascines to be put in by making them only 12, or 15 or 18 feet, irregular lengths put end to end or lapped, and not built continuously, would it be in strict conformity with the specifications?

A. I do not think it would be in strict conformity with the specifications."

Carter stated before the Board of Officers (Board Record Vol. 1), p. 144, in regard to the execution of this same contract:

"Q. (By Major Adams.) Did you describe the fascines in the specifications?

A. Yes, sir; I described it. The fascines in paragraph 39 of the specifications for Cumberland Sound. There I say that the fascines shall be from 30 to 100 feet in length.

I modified that length, and required them to be built in shorter lengths, because I found that *it was delaying the execution of the work, and it was impracticable to carry* them as long as 30 feet, so I ordered them to be built about 15 feet."

Carter admits he so testified before the Board (Wyman Vol. 9), p. 4383.

If the continuous fascines 30 to 100 feet in length could not be carried from the brush camps to the waters' edge, thus requiring the bundles to be rebuilt, and using so much time that it delayed the progress of the work in the 1894 contract necessarily, it must have been much more expensive to the contractors.

Nevertheless, Carter did not cease to require the outside bidders to bid on specifications in subsequent contracts with the same requirements as to length of fascines. See Vol. of Printed Contracts:

1895 Darien Harbor, fascines 30 to 100 feet (p. 467).
1896 Savannah Harbor, fascines 30 to 100 feet (p. 492).
1896 Cumberland Sound, fascines 30 to 100 feet (p. 516).

P. 279. Note.

*Cd. Bixby, witness for defense, testified that to allow the contractors to put in 15 ft. length bundles under these contracts was not in strict conformity to the specifications. (Vol. 18, p. 8657.) He testified: "It ought to make a considerable diference in cost." (Vol. 18, p. 8651.)

But under these contracts all fascines put in by Greene and Gaynor were put in in bundles 12 to 15 or 18 feet in length, laid end to end or merely laid in so as to lap. (Ante p. 276.)

CAPT. ABBOTT'S WINYAW BAY MATTRESSES, MARCH, 1897.

The defense have compiled in (Defendant's Court Martial Exhibits 24, p. 2) a table of bids for mattresses in contract let by Captain Abbott for Winyaw Bay, S. C., bids opened March 12, 1897, in which three designs of mattresses were specified, the kind to be selected after the contract was let at the option of the Engineer, but in which the contractor was allowed to bid a separate price per square yard for each of the different designs.

The contention of the defense is that Abbott's three designs were essentially the same as Carter's three designs, and that Abbott's letting proved that the three designs cost practically the same.

It appears, however (see Defendant's Court Martial Exhibit 24, p. 2) that this contract as let to R. G. Ross, was a $1,241,499.43 stone jetty contract in which only the comparatively small quantity of $47,499.81 was for mattresses at 57 cents per square yard.

Carter Contract No. 6517 for Cumberland Sound, in 1896, had in the specifications 200,000 square yards of mattresses at $1.10 per square yard.

Captain Abbott, who with Captain Black, Carter and others constituted the Board of Engineers, who made the project for the Cumberland Sound project, and who was familiar with the conditions at Cumberland Sound, the entrance to Fernandina, stated before the Board of Officers (Board Record Vol. 2), p. 670:

> "I should say Winyaw Bay is fully as hard as Fernandina. The bar is very shoal.

Q. Is it as hard as the north jetty of Fernandina?
A. Quite similar, I think."

Vol 2 P 812

Abbott further stated (Board Record Vol. 2), p. 667:

"I was uncertain (as to the relative cost of the three designs) when I advertised for Winyaw Bay work, hence called for the price of each design."

Vol 2 P 812

He further stated (Board Record), p. 668:

"The contractor had not begun work at the time when I left the District."

Abbott's specifications like Carter's, contained the specific provision that:

"No mattress will be accepted until properly placed in the work and secured there by a layer of stone of such thickness not exceeding one (1) to two (2) feet as may be required by the Engineer Officer in charge."

This contract was one for the completion of the great stone jetty commenced by Colonel Bixby, and like that, only provided for a "foundation course of mattresses," and it was specifically provided that upon that foundation of mattresses, the jetty was to be built up with stone.

The bidders had to bid on the mattresses as Colonel Bixby testified (Wyman Vol. 8), p. 4236, on the basis of placing each mattress in the work separately.

Vol 8 P 4236

There is an essential difference between the cost of a single layer of mattresses placed as a foundation for a stone jetty and the cost of a layer in a multiple mat, used to build up a jetty of brush.

Abbott's contract never contemplated the building up of a jetty with brush mattresses piled up one on top of another as Carter put his in.

THE FOUNDATION MATTRESS. PROJECT OF 1895.

Captain Abbott, who with Hanbury, Burgess, Black and Carter made the project of improvement of 1895 (Complainant's Exhibit 98 Court Martial) for the Cumberland Sound

Vol 2 P 3197-200

work which was let by Carter in 1896, and in which proj[illegible] the jetty to be built is described as follows:

> "The following type of jetty is proposed. The foundation and apron courses should be of brush mattresses 100 feet in width, and loaded with rip rap stone.
>
> The ultimate jetty section should be composed of a foundation of brush mattresses, with a load consisting of a hearting of small stone covered with heavier stone."

Vol 2 p 816

Captain Abbott testified (Board Record Vol. 2), p. 675:

> "I fully understood that the Board intended a stone jetty, built on a single foundation mattress, extending the full length of the work."

Vol 2 p 810

Captain Black also stated (Board Record Vol. 2), p. 664:

> "Q. (By General Gillespie.) Captain Black, I would like to ask you a question again about what the Board of 1895 really meant to recommend for construction as a foundation for this improvement proposed for Cumberland Sound; what the Board designed to recommend in their report as a proper foundation for improvement of Cumberland Sound?
>
> A. They simply meant a thin mattress of wood and on top of that the jetty was to be built. The wood did not figure in the jetty at all. Do I make myself clear there? (Major Raymond.) Yes."

Vol 2 p 810

Again (Board Record Vol. 2), p. 665:

> "In waters in the South it has been my experience that to keep any brush over a year and a half, it had to be so close to the bottom that it would certainly sand up within six months. For that reason I would use no brush beyond the limit of that sanding up, and that limit so far as I could find out, was within 18 inches of the bottom of the water, the ocean bottom."

Notwithstanding that this project for which Congress appropriated the money called for:

> "A foundation of brush mattresses, with a load consisting of a *hearting of small stone*, covered with heavier stone."

Carter, after he let the contract in 1896, for Cumberland Sound, to Greene & Gaynor, headed his monthly reports (see

Defendant's Exhibit O. O. Shields) to the Chief of Engineers of the material used, with this description of how the work was to be accomplished:

> "This is to be accomplished by the construction of two jetties of stone, *with a mattress hearting wherever admissible,* resting upon a foundation of mattress of brush."

*

Instead of contenting himself with a single course of mattresses as a foundation, and an apron mattress on each side as the project of improvement called for, he piled up mattress on top of mattress sixteen courses high, and put them in in multiple form 8 courses at a time. (Exhibit 369 Shields.) (Carter admits he put them in 16 courses high, Board Record Vol. 3), p. 710.

Indeed, although the work had not near been completed, he had put in to July 31, 1897 (Shields Exhibit 174) 446,102.41 square yards of brush mattresses.

Indeed, he had given orders to his assistant engineer at Cumberland to put in a much larger quantity of brush mattresses than the above.

Carter had put in mattresses at Cumberland under the 1896 contract up to June 1, 1897, as shown on Exhibit 369 (Shields) to the amount of.....253,322.61 sq. yds.

He ordered additional amounts put in by letters of June 9 and July 12, 1897 (Wyman Vol. 1), p. 316 and 317/8 of..289,985. sq. yds.

Making a total of .....543,307.61 sq. yds.

From which it will be seen that the Abbott specifications for the Winyaw Bay contract of 1897, while containing three designs of mattresses on their face, essentially the same as Carter's three, were in fact single course mattresses, carried one at a time over an ocean bar, and sunk one at a time with a load of stone on it, while Carter's third design mattress, as Carter construed it, was simply one course of a multiple

P. 283. Note

*At the earlier part of the Court Martial trial Carter claimed that the use of the expression "A mattress hearting wherever admissible" in these monthly reports and in the Project of Expenditure (Vol. 9, p. 4248) was through an "inadvertence," the phrase having been used in previous projects of improvement for the same place. (Vol. 4, p. 1830.) But in view of the fact that he proceeded to build up a brush jetty with mattresses piled upon top of each other 16 courses high the conclusion that he deliberately intended to depart from the project of the Board would seem inevitable.

course mat carried out to the jetty and sunk at one performance with stone only on the top course. And while Abbott's specifications called for fascines built continuously from 40 to 100 feet, Carter construed his specifications for the third design to allow fascines only 12 to 15 feet in length.

The thing that Greene & Gaynor bid on as a third design mattress (knowing what Carter would call for) was therefore something wholly different from Abbott's third design mattress as he required it to be put in.

CAPTAIN BLACK'S CRITICISM OF CARTER'S SPECIFICATIONS, AND THEIR INTERPRETATION.

(Board Record Vol. 2), p. 480: Vol 3 3694

(By Colonel Gillespie.)

"Q. Having read the specifications which I refer to, were you a contractor could you have known from the specifications without personal conference with Captain Carter, of the special type he expected to use, and could you intelligently bid without such conference?

A. No, sir.

Q. Could you have intelligently bid, after he had informed you verbally of the design he was going to use?

A. I should have had to bid under the specifications, and should, therefore, have had to protect myself by bidding for the mattress of the highest cost.

Q. Had you been the constructing officer, would you have thought it right and proper to ask of the bidders only one price for all these types?

A. No, sir.

Q. Had you been the constructing officer, would you have thought it right and proper to have adopted and constructed a type of mattress different from what the specifications called for without the knowledge and authority of the Chief of Engineers?

A. No, sir.

Q. Taking the specifications as they are written, had you been the constructing officer, would you have thought it right and proper to adopt this type and authorize its construction without first having agreed upon a price re-

duced to correspond with the diminished cost of construction?

A. No, sir. The specifications expressly forbid that."

CARTER'S SECOND DESIGN MATTRESSES NOT USED AFTER 1892 CONTRACT, ALTHOUGH KEPT IN THE SPECIFICATIONS TO BE USED AT OPTION OF ENGINEER.

Defendant's Exhibit 150, compilation of tri-monthly reports of work done under Contract 4960 of 1892, Savannah Harbor, shows that out of the 1,363,572 square yards of mattresses, only 33 mattresses, 24,556.33 square yards, reported as put in of the second design. And even these are reported to have been built as continuous mats two courses thick, and therefore, were not second design mattresses sunk singly with a layer of stone on each mattress as required by the specifications. All the remaining mattresses put in were reported as of the third design fascine mattresses, put in the work with a few exceptions in multiple courses. Carter admits that there were only a few second design mattresses put in under the 1892 contract at Savannah. (Wyman Vol. 9), p. 4449.

A. S. Cooper, Assistant Engineer on the work, testified (Shields Vol. 1), p. 511, that there were no mattresses of the Carter's second design put in under the 1896 contract, No. 6515, at Savannah Harbor. Carter admits this (Wyman Vol. 9), p. 4417-8.

Complainant's Exhibit 369, the tri-monthly reports at Cumberland Sound, shows no second design mats put in there in Contract No. 6517 for 1896.

The testimony of E. R. Conant, Carter's Assistant Engineer at Cumberland Sound, under Contract 5811 of shows that there were no second design mattresses put der that contract, and Carter admits this (Wyman V p. 4384, 4408.

Yet we find that Carter persistently put this second design

mattress in his specifications, to be bid on at one price with his third design mattress, but never required Greene & Gaynor to put them in the work.

The other outside bidders, however, had to bid prices high enough to cover this second design mattress sunk one at a time as Black required, and as Carter had it in the specifications.

CARTER'S EXPLANATION OF JOINDER OF THE THREE DESIGNS TO BE BID ON AT ONE PRICE.

The first explanation Carter offers is that he was justified in assuming after May 4, 1891, that the 9-inch fascine mattress was equivalent in cost to the 18-inch "log and brush" mattress, because he had advertised both kinds of mattresses to be bid for separately per square yard in the John F. Gaynor Contract No. 4572, for Cumberland Sound, let May 4, 1891, and the difference in price was only 2 cents. The log and brush mattress being 99 cents and fascine mattress 97 cents per square yard.

The answer to that is, that Carter knew he had advertised Contract 4572 for only 11 days in the engineering papers. This itself was enough to put him on notice that there had not been enough competition for that contract, to make him accept those prices in view of the previously prevailing prices, as a criterion for fixing the values of the two kinds of mattresses as the same, for the great contracts which followed. He ought to have known that at least two (Gaynor and P. Sanford Ross), out of three, of the bidders for that contract had been operating together in collusive bids. (*Ante*, pp 180 to 192.)

Even it he was blind to what had been going on under his eyes, he was bound to know that just two months before he had let Contract No. 4517 for Brunswick to the same contractor, John F. Gaynor, on March 2, 1891, in which the

price of the log and brush mattress was 96 cents per square yard. And in the same contract, it was provided that the engineer had the right to call for 8,000 cubic yards of fascines from 12 to 15 inches in diameter, at $1.48 per cubic yard, to be put in singly or in mats. (See Volume Printed Contracts, p. 195-6.) This is equivalent, as we have seen, to one-third of $1.48 or 49 cents per square yard for a 12-inch fascine mattress, or one-fourth of $1.48, or 37 cents per square yard for a 9-inch fascine mattress, as against 96 cents per square yard for the "log and brush" mattress in the same contract.

That two months later, May 4, 1891, he should have approved Contract No. 4572, with the price of brush mattresses at 97 cents per square yard, with material equal to only 10 inches in thickness, equivalent to a price of $3.49 per cubic yard (see *ante*, p. 246), as against $1.48 in the Contract of March 2, 1891, is almost sufficient in itself to enable us to put our fingers at the point of time when Carter sold himself outright to Greene and Gaynor.

CARTER'S SECOND EXPLANATION.

The next line of defense offered by Carter is the testimony of certain expert witnesses, contractors or engineers who he contends testified that in their opinion a contractor in bidding on the contract work in the contracts let by Carter would have made no difference in the price bid for Carter's first (or Log and Brush mattress) design and the price bid for the second and third (or fascine mattress) design even if separate bids had been called for.

Even if they had so testified, and one or two of them do say something like it, the answer to this is, what is that testimony worth in the face of the fact that Carter was on full notice from his own office records, that for seven years the prevailing price in the Savannah District, of the one kind of mattress was double the price of the other? *Ante* P. 246

In the face of that fact, what right had he to join the three designs of mattresses to be bid on at one price, the selection of the design to be made after the contract was let, at the option of the engineer, thus forcing outside contractors to bid upon that design which had been the most costly, and then when the contract was let to Greene and Gaynor, to then select that design which had been the cheapest?

EVIDENCE OF DEFENCE AS TO RELATIVE COST OF THE THREE DESIGNS OF MATTRESSES.

The first character of testimony offered by the defense intended to show that there was no difference in the relative cost of the three designs of mattress, was opinions of certain persons who either had bid or had intended to bid on some of the contracts which Carter let, containing the provision for the three designs at the engineer's option. These witnesses were: John W. Rutherford, of Atlanta, Georgia; Louis Y. Schermerhorn, of Philadelphia; C. P. E. Burgwyn, of Richmond, Virginia; P. Sanford Ross, of Newark, New Jersey.

Let us see what value is to be attached to their testimony as indicative of the contention of the defense.

John W. Rutherford, for defendants, testified that he was a civil engineer and contractor, at present his occupation is that of president of a telephone company in Atlanta, Georgia. (Shields Vol. 3) pp. 2482-3.

He went down to Savannah to see about bidding on the 1896 work for Cumberland Sound. Only contemplated bidding on that contract. (Shields Vol. 3) pp. 2466-7.

After his investigations he did not put in any bid at all (Shields Vol. 3), p. 2491. That he prepared a bid with a rate of $1.05 per square yard, for mattresses (Shields Vol. 3), p. 2480. The Atlantic Contracting Company's bid was $1.10 for that work.

On direct examination he testified:

"Q. Would you have made anv difference, Colonel Rutherford, had you known that one design rather than the other was to have been used entirely?

A. No; made no difference whatever. It was a very small matter in the totality of the contract.

Q. And they were practically of the same cost?

A. Practically of the same cost, yes" (Shields Vol. 3), p. 2481. Vol 25 P 12889

"A. In making my calculation for my bid I paid very little attention to the mattress work at all, it being such a small quantity, and bid *merely the prices current* at that time, *and bid in that way.* I did not attach much importance to that. *It was a great big contract for stone.*" (Shields Vol. 3) p. 2480. Vol 25 P 12888

"I do not think the brush would amount to 15 per cent. of the entire amount of the bid" (Shields Vol. 3), p. 2470. Vol 25 P 12878

If he really relied on the current prices at Cumberland Sound for mattress prices, it is easy to account for his bid and his opinion. For he had before him, if he inquired into current prices there, the John F. Gaynor contract No. 4572, of May 4, 1891, for Cumberland Sound, which is the first contract Carter had made, jumping up the prices to 99 cents, per square yard, for log and brush mattresses and 97 cents per square yard, for brush mattresses.

His previous experience was with brush work on the Missouri River, and that was as an engineer and not on Government work, and was in handling brush by the cord (Shields Vol. 3), pp. 2464-5, and not as a contractor (Shields Vol. 3), p. 2483.

How badly Rutherford was fooled as to its being a great stone contract, is shown by the fact that up to the time that work under Carter ceased under this 1896 contract at Cumberland Sound, he had put in 446,102 square yards of mattress work under the contract, and only 21,798 cubic yards of stone. See Exhibits 174 and 180, Shields. The mattresses put in up

to that time being double the quantity stated as the estimate in the specifications for canvassing bids (see Vol. of printed contracts, p. 519).

That it did make a difference to him in his own mind that there were three designs, and that the bidder could not tell which would be selected by the engineer, and therefore that other bidders would be affected in the same way, is shown by the following extract from his own testimony:

> "That was one of the questions I wanted to ask Captain Carter, and for that purpose I went to call upon him. That was one of the undetermined questions *I wanted to know, which class of mattresses would be used*" (Shields Vol. 3), p. 2468.

Why did he want to know? Why did he go to Carter to ask if it made no difference which would be taken or what quantity of each would be taken? He testified Carter replied that

> "No. 3 would be used to the greatest extent, but he wanted the option of using the others that he might find necessary, but the greatest volume of matresses to be furnished under the contract would be No. 3." (Shields Vol. 3) p. 2468-9.

It is very remarkable that he should have given even that much of an intimation to Rutherford, when to other proposed bidders for the same contract he refused to commit himself at all (*post*, p. 296-7). It is very plain, however, that the uncertainty drove Rutherford to rely upon "current prices" for this bid, which since there was but one bid for the three designs, necessarily included the current prices of log mattresses.

L. Y. Schermerhorn, for defendants, testified that he has been President of the American Dredging Company of Philadelphia since 1891. That prior to that time he had been an assistant engineer on Government works on the upper Misissippi and Delaware Rivers (Shields Vol. 3), p. 2015.

That the American Dredging Company is mainly a dredging company, and up to this day has never had a contract for jetty work with brush or log mattresses (Shields Vol. 3), p. 2031. That his company did bid on the big contract of 1892, 2031. That his company did bid on the jetty contract for Savannah Harbor on the big contract of 1892, but this was the first bid for mattress work his company ever made, and not getting it, that under the 1896 contract, they only bid on dredging (Shields Vol. 3), p. 2031, 2032, 2063.

This is the testimony from this witness which they rely on to show that in his opinion there was no difference in the cost of the three designs:

> "Q. Did you make any difference in the bid for mattresses put in by you because there were three designs, and the engineer had the option to use either one of them under the specifications?
>
> A. I did not, because in my judgment there would not be an essential difference in the cost of either of the three designs; at least within such margins as would not be covered by the element of contingencies which must enter into any contractor's estimate of the cost of the work" (Shields Vol. 3), p. 2020.

This was in relation to the 1892 contract for Savannah Harbor which is the only mattress work he ever bid on.

He only had 18 days, between the time of receiving the specifications and the time of opening bids, and only made one trip to Savannah, and that was only two or three days before the openings of the bids (Shields Vol. 3), p. 2032.

That he was not familiar with the Savannah River locality from personal observation (Shields Vol. 3), p. 2025.

That before he prepared his bid he made no physical examination of the sources of brush supply, but relied upon statements made by people he met in the City of Savannah in those two or three days, who wanted to sell him brush as to prices of brush material (Shields Vol. 3), p. 2034. He then proceeds to tell us upon what he really did base his

bid. He says directly after the receipt of the specifications from Carter,

> "I carefully examined the reports of the Chief of Engineers to determine what construction had been made in and about that locality in the past, *and about what the prices had been bid* by the various contractors. That was a character of information to a certain extent to anticipate the prices which I would bid" (Shields Vol. 3), pp. 2032-3. Vol 25 P 12440-1

It is therefore quite clear that Schermerhorn, like Rutherford, on account of the shortness of the time and want of accurate knowledge of the details of the supply of materials and labor was obliged to rely, and in fact that he did rely, upon "current prices" for his bid. As the only previous contract let in the district in which a "log and brush" mattress is joined in the same contract with a "brush" mattress, which appears in the Reports of the Chief of Engineers, is Contract No. 4572, of May 4, 1891, of John F. Gaynor, for Cumberland Sound, in which the bid was 99 cents per square yard, for the "log and brush" mattress and 97 cents per square yard, for the "brush" mattress (see Report of Chief of Engineers for 1891, p. 1563, offered in evidence by the defense, Court Martial Defendant's Exhibit 24 p. 9). It is very clear why Schermerhorn in 1892, relying upon "current prices" should not have made any difference in his estimates of cost as to the two designs in his bid. He could not have made a difference in the bid in fact, because only one bid was allowed. If however, he looked for current prices at Savannah Harbor, the last previous contract shown in the Reports of Chief of Engineers is in Reports for 1891, p. 1504, offered in evidence by the defense in Defendant's Exhibit 24, Court Martial, p. 5, and this gives the price for "mattresses" 85 cents per square yard. The contract itself, No. 4224, of John F. Gaynor, of November 5, 1890, shows that the price stated related to a "log and brush" mattress. So that in either case we find that Schermerhorn's bid, and his opinion is based

on the previous contract awarded to John F. Gaynor, at the high prices inaugurated by Carter in 1891, in which the brush mattress is brought to within two cents of a parity with the log and brush mattress, or based on bids for "log and brush mattresses."

A reference to contract No. 4572, of May 4, 1891, above mentioned will show too, that there was no design of brush mattress in it corresponding to Carter's 3d design; that the brush mattress specified therein corresponded with Carter's 2d design, and that instead of allowing the fascines to be made of bundles of brush laid end to end, it was required that in making the fascine, "the brush must be carefully laid so as to break joints and to make a continuous fascine extending completely across the mattress."

From the above considerations it is very clear that from the method pursued by Mr. Schermerhorn in arriving at his bid, that the fact of there being three designs in the specifications would not have made any difference to him. That he could afford to adopt this method safely and still stand a good chance of getting the Dredging contract over the other bidders, even though they should underbid him a little on mattresses, will be seen from the following considerations: The specifications for contract No. 4960, of 1892, for Savannah Harbor, called for bids for both jetty work and dredging from the same bidder, with the proviso that, "The United States reserves the right to award the contract for jetty work to one bider, and for dredging to another" (Clause 53 of Specifications). From which it will be seen that unless Schermerhorn had bid on the whole contract, under a strict construction of it, he might not have had his bid considered at all, but by bidding on the whole contract he stood a chance of being the lowest bidder on the dredging, and, if so, there was almost a certainly that the Chief of Engineers would have required the acceptance of that bid under the option re-

served. And dredging was their regular business. The table of bids for this contract (*ante*. p. 188), shows that all the bidders bid on the whole contract, but that Schermerhorn was underbid slightly on both the jetty work and the dredging; that the Government split the contract, accepting the bid of the Atlantic Contracting Company as the lowest on the jetty work, and of P. Sandford Ross as the lowest on the dredging.

On the direct examination and in response to a leading question, Schermerhorn testified as follows:

> "Q. What, if anything, was said (in conversation between witness and Carter) with reference to the designs of mattresses that was most likely to be used * * *
>
> A. From the best of my recollection the third design of mattress specified was that which was to be used.
>
> Mr. Erwin: Now, I object to that answer. The question is whether *Carter* told him that.
>
> Mr. Rose: That is what he stated, as I understand it, his best recollection that the information was given him by Carter that the third design was the one intended to be used.
>
> The Witness: By Carter, yes, sir" (Shields Vol. 3), p. 2019.

That the witness did not mean this, is shown by testimony on cross-examination, as follows:

> "My recollection of the conversation is that he (Carter), considered the third design preferable, and *I* concluded that that would be the design *principally* used upon the work" (Shields Vol. 3), p. 2036.

If Carter told him he would use the third design, he gave him information which he declined to give other bidders, according to the testimony of the defense's own witnesses (*post*, pages 296 and 297).

C. P. E. Burgwyn, for defendants, testified that he is a civil engineer and was formerly Assistant Engineer on some Government work on the James river, in Virginia (Shields

Vol. 3). p. 2521. In 1896, he was connected with the Virginia Dredging Company (Shields Vol. 3), p. 2524. He had experience with mattress work while acting as Assistant Engineer on James river, but never did any mattress work as a contractor (Shields Vol. 3), p. 2522. He put in a bid for the dredging at Savannah under the 1896 contract and did not bid on the jetty work at all (Shields Vol. 3), p. 2522. (It seems that by reason of the fact that the Government had split the contract in 1892, bidders in 1896, concluded that they had a right to bid on the jetty work or the dredging as they thought proper. At any rate they did so, Burgwyn and Schermerhorn and Moore bidding only on dredging, and the Atlantic Contracting Company and Grim bidding only on jetty work, while P. Sanford Ross bid on the whole work. Ex. 185 (Shields).

It appears from Exhibit 165 (Shields), that Burgwyn applied to Carter for the specification on August 21, 1896, and they were sent to him on August 24th, fifteen days before the time for opening bids.

Some time after receiving the specifications Burgwyn visited Savannah and interviewed Carter (Shields Vol. 3), p. 2522. He told Carter he intended to bid on both works, dredging and jetty (Shields Vol. 3), p. 2524, but in fact he did not want both, it was too large a job to do them both (Shields Vol. 3), p. 2530. Though he never told Carter of this (Shields Vol. 3), p. 2528.

He investigated the cost of the three designs of mattress, he says, and testified:

> "I did not think there was very much difference between them, if any; I did not think there was much difference between them" (R., 2531).

He did not tell us how he investigated the cost, if by "current prices," as Rutherford and Schermerhorn did, he was bound to reach that conclusion, and his opinion, formed

at that time, about which he testifies, is worth the less, because it is evident he had no serious intention of bidding on anything but the dredging. To use his own words,

> "I felt sure of getting that dredging contract, and did not want both."

And this was the reason he did not bid on the jetty work (Shields Vol. 3), p. 2530.

This witness also testified that Carter would not tell which of the three designs would be used, he testified:

Carter Declines to Say Which Design of Mattress He Will Use.

> "As I recall, his explanation was that he found by experience that certain designs were practically the better at one place than at another, and he desired the liberty of using which design at the particular place, that the experience indicated as better at that place" (Shields Vol. 3), p. 2525.

P. Sanford Ross, for defendants, testified that he is a resident of Newark, New Jersey. He had the dredging contract under the big project of 1890 (Shields Vol. 3), p. 2519, for improving Savannah Harbor. Also he had the previous dredging contract for Savannah Harbor, let November 10, 1888.

> Report of Chief of Engineers for 1889, p. 1228, offered in evidence by defense (Shields Vol. 3), p. 1949.

He also had a previous dredging contract to that (Shields Vol. 3), p. 2508.

He never had a mattress contract in the Savannah District or elsewhere (Shields Vol. 3), p. 2517. Yet his name appears in the abstract of bidders on mattress work in every contract let for Savannah Harbor, from 1884 to 1897 (Exhibi 24, Court Martial tables offered by defense). And his name or that of his associate in the dredging work, Charles C. Ely, appears in the abstract of bidders on numerous contracts in other parts of the district, and in every instance bidding

just a little above the Gaynors, except one. The one instance in which Ely was the lowest bider, and was awarded the contract for jetty work was the contract No. 4037, of May 31, 1889, for Brunswick Harbor. And we find that Ely immediately turned over the contract to the Gaynors and Greene, who did the work and got the money for it (see *ante*, pp. 182-184).

The evidence points strongly to an understanding between the defendants and Ross, to the effect that they arranged their bids in such manner that an appearance of competition would be made, while the bids would be so put in that the defendants would get the jetty work and Ross and Ely the dredging, and that this understanding for parcelling out the work continued until Ross became disgruntled after his unfair treatment under the 1892 contract, by which Carter took off $400,000—from the amount estimated for dredging under the project and spent it on brush mattresses (see Shields Vol. 3), pp. 2519-2520-2375-2376.

It is true that Ross denies that there was collusion in these previous bids (Shields Vol. 3), p. 2516. But the evidence showing it up to the 1896 bidding is overwhelming (*ante*, pp. 180-192).

Carter Declines to Say Which Design of Mattress He Will Use.

P. Sanford Ross further testified:

"Q. Was there anything said at that time (1896) as to which of the designs was most likely to be used?

A. No; I never could get Carter committed on that. He always reserved the right to use the design that was best adapted in his judgment to the location." (Shields Vol. 3), p. 2514.

George Y. Wisner, for defendants:

Other opinion evidence on the relative cost of the three designs, put in by the defense, was the testimony of Mr.

George Y. Wisner, of Detroit, Michigan, a civil engineer, a man who it seems has occupied positions of considerable prominence in his profession (Shields Vol. 3), p. 1687. Evidently a high price employed expert. (Shields Vol. 3), p. 1715. His testimony in this proceeding was substantially the same as he testified before the Court Martial (Shields Vol. 3), p. 1717. He testified:

He had had experience with brush mattresses at the mouth of the Mississippi River repairing the Eads' Jetties in 1888 and 1889, and at Brazos, Texas, 1888-1890 (Shields Vol. 3), p. 1688. That the matress work at the mouth of the Mississippi River was not contract work. He was not limited in making the mattresses by either contract or specifications (Shields Vol. 3), p. 1724. They were paid so much for maintaining a certain depth of water for a certain time irrespective of the means they adopted to maintain it (Shields Vol. 3), p. 1724.

There was not a "log and brush" mattress put in, either in this work or that at Brazos, he used all brush mattresses (Shields Vol. 3), p. 1725. That he has never used in work done by him a "log and brush" mattress such as Carter's first design (Shields Vol. 3), p. 1732. That the work done by him at Brazos was not Government work (Shields Vol. 3), p. 1725. That he was only assistant engineer there (*idem.*) The contract had been let before he got there (*idem*), and the contractors were paid by the result as to the jetties in place, and not for the mattresses (Shields Vol. 3), pp. 1725-6.

From this it appears that the witness has had no experience either in the making or letting of contracts for or contracting for "log and brush" mattresses, such as was Carter's first design. Also that he has had no experience as a contractor or engineer for contractors in the furnishing of "brush" mattresses made under the limitations of any

particular specifications, so that in all his works he was at liberty to carry his construction of mattresses within the widest latitude of his own judgment. He was not familiar with the conditions at Savannah until he went there as an expert for Carter (Shields Vol. 3), p. 1715. He was the paid expert for Carter in the Court Martial trial (*idem*). He testified in this proceeding substantially the same as at the Court Martial trial (Shields Vol. 3), p. 1717.

Wisner's testimony on the relative cost is as follows:

> "I understand that the question is, that with the knowledge from simply a general seeing of the conditions of the material, if I would make any difference in my bid, whether I was bidding for an individual one of the three, or all of them, at the option of the engineer. I would make no difference, because the conditions are such that whatever small difference there would be, might be one way or the other. In all probability the one would cost more than the other when constructed, but from a general examination the difference is so small you could not tell what it was" (Shields Vol. 3), pp. 1710-11.

This statement contains practically that admission that he had only done "a general seeing" of conditions, and made only "a general examination" as a basis for his opinion.

Moreover, he does not in this statement undertake to compare the cost in the works of a first design mattress, which the contractor has to put in one at a time, with the proportion of cost which would belong to one course out of a multiple mat built on the 3d design, where the whole thing is constructed together and towed out and sunk in the works at one time. It will be observed that he only undertakes to compare the cost of putting in an "individual" mat of the one design with the cost of putting in an "individual" mat of either of the other two designs.

The important feature of the relative cost of putting in a given quantity of jetty, with mattresses of one design or the other, which both the question and this testimony of Wis-

ner does not touch, is the imense saving in cost which must accrue in putting in the mats in multiple form rather than putting them in one at a time. And this feature as affecting the relative cost of the cost of the mats, is totally distinct from the question as to whether the multiple form of mats were or were not permissible under the specifications.

This feature may be illustrated as follows:

Illustration.

Suppose the cost of the following articles in New York City were as follows:

A glass vase	$1.00
A wooden bucket	1.00

I am taking the initial cost of the individual articles, the same to correspond to Wisner's opinion.

Suppose that it cost for every trip an individual made to and from his country place, $1, and that he could not carry but one glass vase at a time without injury to it, while he could make a nest of the wooden buckets, placing one inside the other, and carry and deliver safely in this way as many as eight buckets at one time.

Now, comparing the cost of delivering in the country of a single glass vase with the cost of delivering a single or individual bucket, as Wisner compared the mattresses, we would have:

Cost of 1 vase in New York.....	$1.00
Cost of 1 trip to deliver.....	1.00
Cost of 1 vase delivered in country	$2.00
Cost of 1 bucket in New York...	$1.00
Cost of 1 trip to deliver.....	1.00
Cost of 1 bucket delivered in country	$2.00

Now, let us see what the relative cost of the articles delivered would be where a number of them are delivered.

Cost of 8 vases in New York, at $1.00	$8.00
Cost of 8 trips to deliver, at $1.00	8.00
Cost of 8 Vases delivered.....	$16.00
Average cost, 1 vase delivered...	2.00
Cost of 8 buckets in New York, at $1.00	$8.00
Cost of 1 trip to deliver, at $1.00	1.00
Cos of 8 buckets delivered.....	$9.00
Average cost, 1 bucket delivered	1.12

The force of this illustration will be seen from the fact that the "log and brush mattress," Carter's first design, had to be floated out to the jetty from the place where built, and there sunk, one at a time, by piling rock on each mattress (Testimony of Gillette, (Shields Vol. 1), p. 504-5; Cooper, (Shields Vol. 1), p. 512, and Sweeny for defense (Shields Vol. 3), p. 2656. While the third design mat, as actually put in by the defendants, were built in multiple form, 8 and 10 courses high, on a barge at the wharf, near the brush camps, the barge towed on one trip to the jetty, and the whole dumped at once. (Testimony of Cooper (Shields Vol. 1), p. 513; Gillette (Shields Vol. 13), p. 473, 476, 487, 504-505). This method of building and dumping mats in multiple form commenced in September, 1893 (Testimony of Sweeny for defense (Shields Vol. 3), p. 2653. The towing of the barges from brush camps to jetties ranged from 12 to 30 miles under these contracts (Testimony of Sweeny for defense (Shields Vol. 3), p. 2658). From this it will be seen that the average cost of putting in one course of mattress, when constructed in multiple form, must have been greatly below the cost of putting in the same mattress singly.*

Now what are the opinions of these witnesses on the ques-

P. 301 Note

*It would not have been practicable even to have built a multiple mat of the 2nd design of Carter's specifications, without dispensing with the upper tier of cross fascines and also with ¼ of the cross poles of the grillage. Indeed, Bixby for defense, testified that it would have been impracticable to do it with the similar Winyaw Bay mat. (Vol. 18, p. 8649.) Bidders were, therefore forced to bid on the idea that they might be called upon to sink each mat separately, and fix their prices accordingly.

tion of relative cost worth, based on the premises stated by them, and expressed with the limitations made by them in the face of the Government's testimony? In face of the difference in the quantity of material required by the different designs, the difference of construction, and the fact that first design "log and brush" mattress had to be floated and towed out to the jetty, and there loaded with rock and sunk singly in the works, while the brush mattress of the third design as actually constructed and placed, was piled up one on top of another on a barge 8 and 10 courses high, and with two-thirds of the specified grillage poles omitted, and the whole as a multiple mat dumped at one time in the works? In the face of the fact that up to the time when Carter first joined the 1st and 3d designs in one contract (May 4, 1891), to be bid on by the square yard, the cost of the one mattress in the work had been double the cost of the other in all previous contracts let in the District?

This excuse for joining the three designs of mattresses in the same contract to be bid on at one price, and the selection to be at the option of the Engineer is therefore untenable.

HOW P. SANFORD ROSS WAS CUT OUT OF CONTRACT WORK ON 1892 DREDGING CONTRACT FOR SAVANNAH HARBOR.

CHANGING DREDGING INTO BRUSH MATTRESSES.

We have already referred to the evidence (*ante*, p. 180, *et seq.*), showing that P. Sanford Ross, through himself and his manager, Charles C. Ely, had obtained all the dredging contracts in the Savannah District from 1890 until 1896. That

Ross obtained the Dredging Contract in 1892 under the big project for improving Savannah Harbor.

The amount of dredging estimated for canvassing bids for that Contract No. 4960, was 7,000,000 cubic yards. (See Exhibit 182, Shields, also see Printed Volume of Contracts, p. 295.)

Ross's bid was for 7,000,000 cubic yards of dredging at 16 cents	$1,120,000
Wharfing and revetment	100,000
	$1,220,000

When Ross came to do the work, this is what happened, as he testified, when called by the defense (Shields Vol. 3), p. 2519:

"Q. Mr. Ross, isn't it true that under the dredging contract which you had under what was known as the big project of 1890, that only about two-thirds of the amount of dredging was done that was estimated would be done under the project?

A. Yes, sir.

Q. That is true, is it?

A. That is, including the cutting off of Hutchinson's Island, our contract called for 7,000,000 yards or more or less. Of course that was tentative. Carter claimed and thought they would get a great deal of scour there that might reduce that, but of course, I counted we would get it all, and the cutting off of Hutchinson's Island as well, which was at a fixed price, made our contract aggregate something over $1,200,000, and I think we only got about $800,000, which was a very sore point with me.

Q. That left about $400,000, in rough figures, of the amount estimated for the whole project which might be spent in other ways?

A. Yes, well, it was used up for mattress work and jetty work and so forth.

Q. Mr. Ross, was there a scour up in that part of the work which Carter claimed made dredging unnecessary?

A. No. sir; there was not. The scour was—brought down material rather than cut it away.

The fact was there wasn't money enough to finish the

width of cutting of the channel that we were to make, and it has never been finished yet, either."

What became of the money which had been provided for dredging is easily seen by reference to Carter's original Project of Improvement for Savannah Harbor of June 30, 1890 (held subject to inspection), or to the same report in printed form in Chief of Engineers' Reports for 1890, Part 2, p. 1259 to 1263, which is made by Defendant's Court Martial Exhibit 24, by reference therein, see page 44 of same.

The project shows that the entire cost of executing the Project (see page 1262 of said printed report) was (separating the dredging from the jetty work and other items), estimated therein as follows:

Cost Estimated in Project of 1890, *Savannah Harbor.*

Dredging:		
Above cross tides	$24,000	
Cross tides to Fort Oglethorpe	595,500	
Additional Kings' Island	109,500	
Fort Oglethorpe to Oyster Beds	279,750	
Oyster Bed to Tybee Roads	443,400	$1,452,150
Jetty Work:		
Above Cross Tides	$ 6,400	
Cross Tides to Fort Oglethorpe	113,600	
Fort Oglethorpe to Oyster Bed	688,250	
Oyster Bed to Tybee Roads	938,000	1,746,250
Possible land drainage to Hutchinson's Island		45,000
Engineering and contingencies 10 per cent		324,340
		$3,567,740

(Note there is a clerical error in addition in the very last footing in Carter's report, which will be noticed, on inspec-

tion, which is here mentioned only to account for the slight difference in footing.)

This project provided, as will be seen from the same references (Printed Report p. 1262) for a channel Cross Tides above the City of Savannah, 300 feet wide and 26 feet deep and mean high tide to Fort Oglethorpe below the city. And 400 feet wide and 26 feet deep, at mean high water from Obstruction down.

Carter, as Ross testified, never carried out the improvements above the city, see Carter's cross-examination (Wyman Vol. 9), p. 4371, *et seq.*, for which he estimated and for which the money was appropriated in full by Congress. (Court Martial Record Vol. 6), p. 1380. Nor did he cut out a channel over 240 feet wide, where the project for which the money was appropriated by Congress called for 300 and 400 feet in width of channel. (See Carter's Report Chief of Engineer's Reports for 1896, p. 1220 and Report of 1897, p. 1494, ~~referred to in Defendant's Court Martial Exhibit 24.~~)

Yet he had expended of the money appropriated therefor, up to June 30, 1897, as stated in Defendant's (Court Martial Exhibit 24), p. 44, $3,460,049.99.

Carter managed to expend the money appropriated by Congress for carrying out the project without doing the work by a resort to that clause of the contract which provides (see Volume of Printed Contracts, p. 298):

> "He (the engineer) will, if he thinks proper, be at liberty to increase or decrease the relative quantities of all materials."

The Jetty Contract of 1892, No. 4960, for Savannah Harbor, fixed the quantity of mattresses to be used for canvass-

ing bids at 350,000 square yards. (Printed Volume of Contracts, p. 297.)

After Greene & Gaynor got the contract, Carter used in the work (Exhibit 174, Shields), 1,363,572.36 square yards.

That is to say, for:

Contract 4960, Savannah Harbor, 1892.

Used in the work, mattresses	1,363,572.36	sq. yd. at 95c	$1,295,393.75
Estimated for the work, mattresses	350,000.	sq. yd. at 95c	332,500.00
Used in excess of estimate	1,013,573.36	sq. yd. at 95c	$962,893.75

In order to give Greene & Gaynor this $962,893.75, extra mattress work, as we have already seen, Carter cut off over $400,000 of dredging from Ross's contract. The balance of the $962,893.75 was made up by reducing the amount of stone which was to have been put on the mattresses, but which he did not put on (See Exhibit Shields) and using the amount set apart for land damages to Hutchinson's Island and contingencies (see *ante*, p. 303, *et seq.*).

HOW ROSS WAS CUT OUT OF 1896 CONTRACT SAVANNAH HARBOR.

"RINGING THE CHANGES."

It is not surprising that P. Sanford Ross should have felt disgruntled when over $400,000 had been cut out of his contract, and given to Greene & Gaynor, and that when the 1896 contract was to be let he should have tried to scare up Greene & Gaynor by attempting to bid against them. Ross went to Carter and tried to get Carter to tell him which one of the

three designs of mattress described in the specifications he would use, but as Ross testified (Shields Vol. 3), p. 2514:

> "I never could get Carter committed on that. He always reserved the right to use the design that was best adapted in his judgment to the location."

This inability to know which kind of mattress Carter would select, and the clause in the specifications as to the Engineer's right to change the relative amount of material, was sufficient in itself to down Ross, as we shall presently see.

Ross, however, put in his bid. This time he bid 90 cents per square yard for mattresses, while Greene & Gaynor (The Atlantic Contracting Co.) bid 95 cents per square yard. Nevertheless, he did not get the contract, not being the lowest bidder on the whole contract. His bid compared with Greene & Gaynor's bid (see Exhibit 182, Shields) showed up as follows:

Bid of P. Sanford Ross. 1896.

Estimated Amount of Material.	Bid.	Amount.
200,000 sq. yards Mattress	at 90 cents	$180,000
25,000 tons 1st class stone	at $4.80	120,000
25,000 tons 2nd class stone	at 4.80	120,000
50,000 cubic yards 3rd class stone	at 3.55	177,500
100,000 cubic yards 4th class stone	at 2.60	260,000
Total bid		$857,500

Bid of Atlantic Contracting Co. 1896.

Estimated Amount of Material.	Bid.	Amount.
200,000 sq. yards Mattress	at 95 cents	$190,000
25,000 tons 1st class stone	at $3.90	97,500
25,000 tons 2nd class stone	at 3.90	97,500
50,000 cubic yards 3rd class stone	at 3.50	175,000
100,000 cubic yards 4th class stone	at 2.75	275,000
Total bid		$835,000

From which it will be seen that on the amounts of material estimated to canvass bids, Greene & Gaynor were the lowest bidders by $22,500 and therefore were awarded the contract.

Now let us see what the cost of the material actually put in under this Contract No. 6515. Savannah Harbor, 1896, would have been to the Government if put in at the prices bid by Ross compared to what it was at the prices bid by the Atlantic Contracting Co. (Greene & Gaynor).

The quantity of mattresses used to July 30, 1897, is shown in Exhibit 174 (Shields). The quantity of stone used is shown in Exhibit 180 (Shields). Taking these quantities at the prices bid by Ross, and by the Atlantic Contracting Co., respectively, they show results as follows:

Bids compared on quantities actually used.

P. Sanford Ross.

255,830.43 sq. yds. mattress at 90 cents.....	$230,247.39
21,729.14 cub. yds. 4th class stone at $2.60.....	56,495.76
	$286,743.15

Atlantic Contracting Co.

255,830.43 sq. yds. mattress at 95 cents.....	$243,038.91
21,729.14 cub. yds. 4th class stone at $2.75....	59,755.13
	$302,794.04

From which it will be seen that on the material actually put in under the 1896 contract at Savannah, Ross was the lowest bidder by $16,050.89.

It is claimed, however, by the defense, that the 1896 contract at Savannah was not completed in July 1897, and that Carter, if he had remained in charge, would have put in the heavy expensive stone after that time. But no credence can be put in that statement under the evidence.

In the first place, Carter had estimated for canvassing bids that he would use only 200,00 square yards of mattress for this contract, No. 6515. (See Printed Volume of Contracts, p. 496.) Up to July 31, 1897, he had already used 255,830.43 square yards of mattresses, or 55,830.43 square yards of mattresses more than he estimated for.

Indeed, his method of building the mattresses in courses (the multiple mat) without putting the layer of stone on each course as required by the specifications, and only putting a layer on the top course, was in itself sufficient to do away with the greater part of the stone.

Venable, who was, as sub-contractor, to have furnished the heavy stone to Greene & Gaynor, had never been called upon to furnish but about $1,000 of stone, and when he complained to Greene, the latter told him (*ante* p. 221) that Carter had changed the quantity of material so as to largely dispense with stone.

Cooper Letter of March 10, 1897.

In the second place there is a letter in evidence (Shields Exhibit 196, Vol. 1, p. 529) from A. S. Cooper, Assistant Engineer to Carter, dated March 10, 1897, which comes from Carter's letter files, in which Cooper writes him in relation to the Tybee breakwater under construction under that contract, in which Cooper calls Carter's attention to the fact that there was not sufficient stone put on to keep the mattresses in place, that the Teredo (marine worms) were destroying the mattresses, and recommending additional stone.

This letter was written on March 10, 1897, and Carter remained in charge of the district to July 17, 1897. Yet Cooper testified (Shields Vol. 1), p. 532, Carter supplied no additional stone, and made no change in his method of construction after that report was made to him by his Assistant Engineer.

In the third place, what Carter intended to do at Savannah under the 1896 contract, is best shown by what he did do in the other contracts in regard to changing the relative quantities of mattress material, this is shown in Complainant's Exhibit 174, Shields, as follows:

Exhibit 174 (*Shields*). Vol 31

Quantities of Mattresses Used to Canvass Bids Compared with Quantities Actually Used.

	Contracts.		Used to Canvass sq. yds.	Actually put in, sq. yds.
4960	Savannah Harbor	1892	350,000	1,363.572.36
4820	Cumberland Sound	1892	80,000	107,734.92
5811	Cumberland Sound	1894	50,000	213,334.11
6517	Cumberland Sound	1896	200,000	446,102.41
6515	Savannah Harbor	1896	200,000	255,830.43

Indeed, in other part of his defense, Carter is claiming merit for his "multiple mat" in that it enabled him to omit from the work large quantities of stone which he had estimated for, and thus save the cost of the stone to the Government (Wyman Vol. 6), p. 150.

In the light of this evidence, it is apparent how the clause, reserving to the engineer the right to change the [illegible]

P. 310. Note

*After the contract 6515 of Oct. 8, 1896, had been let to the Atlantic Contg. Co., to wit, on Dec. 18, 1896—Carter wrote the Chief of Engineers—as follows:

"In the specifications only 200,000 sq. yds. of brush mattresses are given, but as new soundings show that 300,000 sq. yds. will be required, this estimate has been changed as provided in par. 44 of the specifications." (Vol. 5, p. 2150.)

Carter claims that he put the Chief of Engineers on notice that the quantities of mattresses put in by him under the 1892 contract had exceeded the estimate of 350,000 sq. yds. stated in the project of 1890 and the specifications for canvassing bids in the contract of 1892, by reporting the quantities put in in connection with the work done at different places in his annual reports to the Chief of Engineers intended for printing in the annual reports of the Chief of Engineers. He cites extracts from his reports printed in the annual reports on Savannah Harbor, as follows:

Vol. 4, p. 1552, annual report for 1893:
Put in S. H. to June 30, '93. Mattresses. Sq yds. 240,798.95.
Vol. 4, p. 1552, annual report for 1894:
Put in S. H. to June 30, '94. Mattresses, sq. yds. 699,536.65.

But these annual reports of the Chief of Engineers are like the Patent Office reports, intended more for information to the general public than for checking up in detail the work of the offices in the various districts.

Gen. Craighill, witness for defense, who was Division Engineer during the

CARTER FAILS TO CALL TO THE ATTENTION OF HIS SUPERIOR OFFICERS THESE IMMENSE DEPARTURES FROM THE SPECIFICATIONS AS TO QUANTITIES OF MATERIAL USED.

Questioned on this point, Captain W. M. Black stated (Board Record), p. 482:

"Q. The specifications say that the quantity of mattress work required for canvassing bids for Savannah Harbor (1892 contract) would be 350,000 square yards, had you been the constructing officer would you have thought it right and proper to increase this quantity to 1,360,000 square yards, the quantities of other required materials being correspondgly reduced?

A. No, sir.

Q. Would you have deemed it sufficient to have made a report of this increase by a monthly report alone, or would you have deemed it necessary to make a special report direct to the Chief of Engineers upon the subject?

A. I should have deemed it a radical departure from the terms under which the contract was let and therefore requiring special authority."

Colonel Peter C. Hains, who was Division Engineer from May, 1895 (Shields Vol. 3), p. 1763, stated before the Board, in answer to a question by Captain Carter (Board Record Vol. 2), p. 471:

"Q. You were asked, Colonel, if it was proper for me to have increased the amount of mattress from 350,000 square yards to over 1,000,000 square yards without the knowledge of the Chief of Engineers. Suppose that were reported in writing to him and to the Division Engineer every month, is not that a sufficient notification?

A. I should say not, because a report of that kind would not be noticed if it was in the 'Report of Operations.' Such a report would not be noticed."

It is admitted by Captain Carter that he made no special report to the Chief of Engineers or Division Engineer of this immense increase in quantity of brush mattresses over the amounts used to canvas bids. A sample of "The Monthly Reports of Operations," to which Carter refers, as conveying the information to the Chief of Engineers and Division En-

gineer, is in evidence as Exhibit I, and Exhibit 99, Shields. An inspection of these reports will show that in no one report is the information contained. That each report is simply a report of the material put in for that particular month. Carter admits this under cross-examination. (Wyman Vol. 9), p. 4550. That to get at the information the Chief of Engineers would have had to add up the amounts reported for each successive month taken from preceding reports. (Wyman Vol. 9), p. 4551.

General Craighill, who was Division Engineer from 1888, to May 10, 1895, and Chief of Engineers from May 10, 1895, to February, 1897 (Shields Vol. 3), p. 1763-4-6, called as a witness for the defense, testified before the Board of Officers (Board Record Vol. 3), p. 823:

> "Q. Did you at any time while you were Division Engineer have any reason to suppose that Captain Carter exceeded the quantities specified in the specifications?
>
> A. I did not.
>
> Q. Your attention was never called to that at any time?
>
> A. If it was, I think I would have remembered it."

CARTER'S CLAIMS AS TO NUMBER OF COURSES OF MATTRESSES CONTEMPLATED IN PROJECT OF 1895, CUMBERLAND SOUND.

Carter contends that the project of 1895, for Cumberland (Exhibit 99 Court Martial) having stated the quantity of mattress at 425,000 square yards, that to use that quantity it would require more than one course of mattress.

An examination of Exhibit 99 (Court Martial), however, will show that the length of the jetties to be added to the previous portions built is not stated in the project. It is stated therein as follows:

> "The present situation may be summed up as follows: The foundation course of the north jetty is 18,235 feet, and that of the south jetty 10,062.5 feet long, measured along the axis of the work."

Captain Black, in answer to Carter's questions stated (Board Record Vol. 2), p. 497:

"Q. (By Captain Carter.) I think the length of jetty to be covered was about 6,000 feet. Well, the exact figures are immaterial. What I want to find out is this: The length as I remember it, over which those mattresses had to extend was about 6,000 feet. Was it not absolutely necessary in order to have arrived at that yardage (425,000 yards) that there must have been several courses of mattresses?

A. That is not as I understood it. The figures were taken from your estimate.

Q. Well, my estimates were made on that basis. Whether you understood it that way, I don't remember."

But the project of 1895, as we have seen, contemplated an apron course alongside of the jetties after they were built, which Carter never built. But if Carter intended, when he let the contract, to use in the contract the full amount of 425,000 square yards of mattresses estimated in the project of improvement of 1895, his conduct in putting in only 200,000 square yards in his specifications for canvassing bids, and thus determining on that basis who the lowest bidder would be, and then (*ante*, p. 283) ordering 543,307.61 square yards put in the work after Greene & Gaynor got the contract, is still more reprehensible.

P. 313. Note

*According to the plat annexed to the project, Def. Exh. 23, Ct. Martial, the new extension of jetties which were to be built were

For north jetty	3,000 ft.
For south jetty	3,500 ft.

(Vol. 6, p. 3006.)

The project called for jetties to be built on a foundation of mattresses 100 ft. wide, and with aprons of Mattresses 100 ft. wide. (Vol. 26, p. 13191.)

The project also provided for closing a gap of 1,000 ft. which cut across the old jetties, and for aprons of mats on each side. (Vol. 26, p. 13190.)

The part of the north jetty already partially completed was to be raised. (Vol. 26, p. 13189.)

The ultimate jetty was to have aprons of mattresses. (Vol. 26, p. 13191.)

The length of the new extension of jetties and including the gap was

The width of jetty	7,500 ft. = 2,500 yds.
Width of 2 aprons	100 ft.
	200 ft.
	300 ft. = 100 yds.

2,500 yds. X 100 yds. = 250,000 sq. yds. of mats.

The Board estimate was for 425,000 sq. yds.

Subtract 250,000 sq. yds.

Direct Evidence of the Conspiracy.

TESTIMONY OF CHARLES P. GOODYEAR.

We are not left, however, to circumstancial evidence for proof of the corrupt conspiracy between Carter and the defendants. The testimony of Mr. Charles P. Goodyear, of Brunswick, Georgia, goes directly to the point. Mr. Goodyear was a member of the City Council of Brunswick, Georgia. At the instance of the Board of Trade and Mayor and Council of Brunswick in 1891, he commenced a series of experiments looking to the improvement of the channel of Brunswick harbor by the dynamite process. The method contemplated the placing of dynamite along the bottom, on the bottom and under the bottom of the channel, loosening the sands by explosions of dynamite, and enabling the strong tidal currents to wash out the channel to the required depth (see Testimony of Goodyear, Shields Vol. 1), p. 137-8. Under Act of Congress approved July 27, 1892, 27 Stat. L., p. 280, Goodyear engaged in deepening the channel by the dynamite process. The Act of Congress, as will be seen, provided for conditional compensation. That is to say, a certain amount, $10,000, when he should have obtained a depth of twenty-two feet, mean high water, and ten thousand dollars more on obtaining a depth of twenty-three feet (see testimony of Goodyear, pp. 140-141, and the Act of Congress referred to). Carter was detailed in 1892 to make a test survery to see if Goodyear had gotten the requisite amount of water (testimony of Goodyear, Shields Vol. 1), pp. 139-140-141. The survey was made in November, 1892. Carter's headquarters were in Savannah. Goodyear was living in Brunswick. The result of the survey was not immediately known. In the latter part of November, 1892, Goodyear visited Carter in Savannah at his office. Goodyear was ac-

companied by Mr. W. E. Kay, his law partner (Shields Vol. 1), p. 142. Carter told Goodyear that his survey did not show the requisite depth and then asked Goodyear for a private interview, separate from Mr. Kay. (Shields Vol. 1) pp. 143-144. Goodyear gave it to him. Carter said to Goodyear, to use the latter's language:

"That he had as an Engineer Officer been very desirous of deepening the outer bar of Brunswick, Georgia, by the jetty system under a recommendation that he had made for deepening that bar for a compensation of $2,718,000. that is an estimate for that amount. He stated that he recognized the fact that so long as I continued my work upon the bar by the method I was pursuing, the use of dynamite, the people of Brunswick would not support an effort to obtain the contract for jetties from the Government. That he recognized the fact that I had, as he expressed it, a good deal of influence in Washington. That he believed legislation could be procured for the deepening of the outer bar of Brunswick upon the basis of the recommendation of $2,718,000 by the construction of jetties. That it would be necessary if such an arrangement was carried through that he should remain at Savannah. That it would require to retain him there the influence not only of the people of Savannah, but perhaps the influence of the people of Brunswick. He said that he had in his mind a firm of honest contractors who would get the contract for that work if the Act of Congress could be passed appropriating the moneys for the jetty system. He said that if I would abandon my dynamite method, abandon work upon the bar and procure the influence of the people of Brunswick, which he said he recognized was behind me and would be governed by my action, and go to Washington and do what I could to procure the passage of this legislation, that he would procure me reimbursement for all the money I had spent to that time on the outer bar of Brunswick; that he would procure all my expenses paid to Washington, and that he would procure payment of one-third of all the profits on the jetty enterprises in the event that the act was passed." (Shields Vol. 1) p. 144-5.

Godyear continues:

"He (Carter) said that the contractors to whom he referred and who would get the contract, would reimburse me the money I had paid; that they would pay my expenses to Washington and would pay me one-third of the profits from the enterprise—the jetty enterprise—in the event the bill was passed." (Shields Vol. 1) p. 144.

Goodyear continues:

"He then told me who the contractors were, that they were Greene and Gaynor, and I then suggested that it would be well to have some confirmation from the contractors of any proposition of that sort, upon which he sent for John Gaynor, and John Gaynor came into the room and participated in the balance of the interview, confirming the statements that Carter made, with one exception, Carter had created the impression in my mind that it was proposed to reimburse me at once for my outlays on the bar at Brunswick, then inconsiderable, amounting to about sixteen thousand dollars, to pay my expenses to Washington and to pay me one-third of the profits. He confirmed the propositions made by Carter, with the exception of the proposition in relation to the $16,000, which was only to be paid me in the event the legistion was procured for deepening the outer bar by jetties." (Shields Vol. 1) pp. 145-6. Vol 23 P10543-4

Goodyear said to Gaynor:

"I have had some discussion with Captain Carter about jetties getting water on this bar."

Gaynor replied:

"What do you care about water? The thing to get is money." (Shields Vol. 1) p. 146. Vol 23 P10544

The conversation continued upon the details in relation to this matter, and Goodyear testified:

"I am not confident whether it was during the presence of Mr. Gaynor, or a statement of Captain Carter's, but either before Mr. Gaynor came into the room or afterwards, the question was raised what a third of the profits of this enterprise would mean, and the statement was made that it would be one-third of $750,000 if the act was passed based upon Carter's recommendation of $2,718,000." (Shields Vol. 1) p. 146. Vol 23 P10544

Later on in December, 1892, John Gaynor and Edward Gaynor visited Goodyear at Brunswick and urged him to accept the proposition and it was definitely declined (Shields Vol. 1), p. 147.

In the conversation between Carter, Gaynor and Goodyear, Carter stated that there would be a division of profits by three, one part for Goodyear, and one part would be set apart for a purpose not stated. (Shields Vol. 1) p. 159.

This evidence is conclusive of the fact that there was a corrupt conspiracy on the part of Carter, with Greene and Gaynor to give them all the contracts in his district at the time, 1892, when the proposition was made. It is not necessary to consider whether or not Goodyear's method was a good or bad one. The record shows that he has continued to carry it on from that time with comparative success. However that may be from an engineering standpoint, the fact that he was in Carter's and Greene's and Gaynor's way cannot be disputed and the motive for the conversation sustains the truth of the testimony.

*The Walsh contract was stopped because the appropriation was exhausted. Nevertheless, W. G. Austin, under Carter, testified that only 341.5 out of 1,000 cu. yds. of rock excavation was done, but that he trimmed 48 miles of river bank, costing the contractor about $90 for which the Government paid the contractor $1,600 when the contract called for but 20 miles, that it was much more lucrative to the contractor to trim the trees than to excavate the rock. (Vol.

work. The fascines were prepared precisely like those in the Gaynor and Walsh contracts and from the same material (Shields Vol. 1), p. 710. Before he put any in, however, Carter visited the brush camp and examined the fascines and said none of them would do. Carter took off his gloves and cut the string they were bound with and then trimmed off all the brush, leaving nothing but the naked pole. He superintended the making of one fascine, which was made of poles without any brush at all, and then told Twiggs, "Now, that is the way I want them made, and the poles must be the whole length of the fascine." If the fascine was twelve feet long no pole could be less than twelve feet. If the fascine was twenty feet the poles had to be twenty feet. (Testimony of Twiggs, Shields Vol. 1, p. 710.) Carter also required that the fascines should be bound with wire, while the Gaynor contracts, under similar specifications, were tied with only lath yard. And whereas the Gaynor fascines had been made up with loose brush, limbs and leaves altogether; Twiggs' fascines had to be made up of bare poles. Testimony of Twiggs (Shields Vol. 1), p. 710. Whereas Gaynor was allowed to use the material to be found within two or three hundred yards of the bank of the river and place of work, Twiggs was required to get such material as could only be obtained from six to twenty-four miles down the river and had to be hauled by steamboat. (Shields Vol. 1) p. 711. And yet the requirements in the specifications under the two contracts in this particular were the same. Carter even suggested that the kind of binder poles required by Twiggs might be obtained at Millen, a station on the railroad some 50 miles from Augusta. (Shields Vol. 1) p. 712. A few days after this, Twiggs visited Savannah where the big continuous contract of the Atlanta Contracting Company of October, 1892, was then in progress. Twiggs got a row boat and went out to the training wall and examined the brush being used there, for the purpose of seeing what was being done there at that

P. 320. Note

*Conant testified that on previous work done by the Gaynors the fascines were laid for shore protection on top of the ground. But Carter required that the Twiggs fascines should be sunk by excavating the bank so that the tops of the fascines should be flush with the ground. (Vol. 7, p. 3230.) Carter admits this, but lays the blame for not doing it in previous work on Lieut. Rees. (Vol. 7, p. 3663.)

time. The fascines being used were made up of brush, pine tops, vines, etc. (Shields Vol. 1) p. 712. The work done under the Gaynor contracts at Augusta, as well as the work done under the Twiggs contract, was the building of what is known as spur dams which project out from the bank into the river. The fascines with which these spur dams were constructed were laid parallel to the bank of the river, and the dam commenced up on the river embankment to give shore protection and extended out into the river so as to narrow the channel. On the top of the fascines, rocks were placed to hold down the dam. Under the Gaynor contracts, the bundles of brush, covering the shore protection, were laid close together, and one pin eighteen or twenty inches long was driven in each of the fascines, to hold them in place until the rocks were placed on them. Testimony of Twiggs (Shields Vol. 1), p. 713. Fascines laid close together and pinned down for shore protection, extended to the water's edge. The dam was extended out into the water by a foundation of fascine mats, which were floated into position and sunk by placing rocks on them (Shields Vol. 1), p. 714. In fastening down the fascines where the dam was carried up on the shore for shore protection, Twiggs was required by Carter to fasten them down with stakes six feet long and three inches in diameter at the small end, while Gaynors were only required to fasten them down with pins eighteen inches long and one and a half inches in diameter (Shields Vol. 1), p. 716-717. Twiggs complained to Carter that they could not be driven by hand, but the inspector, under Carter's direction, stood there and required that the pins be driven down six feet into the ground, sometimes taking three men twenty minutes to drive them, and Carter told Twiggs if he could not succeed that way he must get a pile driver (Shields Vol. 1), p. 717.

That the hardships put on Twiggs by Mr. Conant, the inspector, were done under the direct instruction of Captain

P. 325. Note

*The Walsh contract was stopped because the appropriation was exhausted. Nevertheless, W. G. Austin, under Carter, testified that only 341.5 out of 1,000 cu. yds. of rock excavation was done, but that he trimmed 48 miles of river bank, costing the contractor about $90 for which the Government paid the contractor $1,600 when the contract called for but 20 miles, that it was much more lucrative to the contractor to trim the trees than to excavate the rock. (Vol.

Carter, is shown by Carter's letter to Conant, Exhibit 263, taken from his letter-press book (see Shields Vol. 1), p. 768-769, under which Conant acted. See testimony of Twiggs, Record, page 1791, in which letter Carter says:

> "Each fascine must be staked to the bank by four stakes three inches in diameter at the small end and six feet long for bottom layer *and one foot additional length* for each extra course. These stakes must be driven down to their full length flush with fascines."

Not only was this a change of construction of fascines in a way he had not required of the Gaynors, but it was a provision not authorized by the specifications and contract itself, the provisions in the specifications, see Clause 37 (Printed Volume of Contracts, p. 419), being:

> "These stakes shall be at least five feet long for bottom layers and *six feet* long for any upper layer and must be driven until their heads are flush with the brush."

Carter's letter of instructions above referred to also provides:

> "Fascines must be of *two lengths*, twelve feet and twenty feet. All others must be rejected. The brush must be free from limbs and choked absolutely tight at two feet intervals or less. If this is not done all fascines will be rejected."
>
> See Exhibit 263, copied in Record (Shields Vol. 1), p. 768.

Here again the construction varies the terms of the specifications which provides for fascines from twelve to twenty feet in length, and these instructions were rigidly carried out.

Twiggs was required to use a chain choker for compressing fascines. The chains had rings in the end and being wrapped around the bundle of brush, two levers six feet in length each were run through the rings and used in choking the fascine. (Shields Vol. 1), p. 719-720.) The Gaynors were allowed to use a rope choker and lever about four feet in length. (Shields Vol. 1), p. 721-722. The contract simply used the expression "An approved form of choker."

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So also in regard to the length of the fascines. While the specifications provide for fascines from twelve to twenty feet, Carter's letter of instructions to Conant actually required of Twiggs that he have only two lengths of fascine, twelve or twenty feet, and to reject all fascines varying even six inches. (Shields Vol. 1), p. 764-765. Carter's letter of instructions to Conant also provided:

> "Banks must be carefully cut to a slope of at least one to one and a half where shore protection is used. This must be uniform." (Shields Vol. 1) p. 769.

This was rigidly required of Twiggs and not at all of Gaynor . (Shields Vol. 1) p. 729.

Carter also required of Twiggs that if a mat sunk was out of line six inches, that it be taken up and replaced, causing all work to be stopped until a steamboat could pull it into position (Shields Vol. 1), p. 719. There is no such requirement in the specifications. Although Twiggs offered not to charge for a mat under those circumstances, the requirement was rigidly enforced, thus delaying him greatly in his work (Shields Vol. 1), p. . This was especially hard as the contract provided in clause 43 as follows:

> "All guage stakes, range stakes and other markers will be placed and maintained, and all other work will be executed under supervision of the engineer officer in charge, or his representative, who will prescribe the order in which the materials are to be placed, and who will point out lines, levels and slopes to be used. * * * No material will be placed in the work without his knowledge and instructions at the time, and any material placed without his knowledge, or not in accordance with his instruction, will not be paid for."

Under this provision Twiggs was not allowed to work at but one part of his job at a time, although the contract was to do work at several different places on the river (Shields Vol 1), p. 718.

A comparison of the different requirements made of Twiggs

P. 383. Note

from those made of the Gaynor contracts may be made by reference to the photographs in evidence (Exhibit 257 Shields). Exhibit 257 being a photograph taken November 22, 1897, of the shore protection to one of the Gaynor jetties under contract 1891 (Shields Vol. 1), pp. 730-731. Exhibit 258 being a photograph of spur dam built by the Gaynors in 1891, three miles below Augusta, which photograph was taken November 22, 1897 (See testimony, Shields Vol. 1), p. 731, and Exhibit No. 259), being another shore protection for spur dam built by Gaynors in 1891, at Sand Bar Ferry, below Augusta, photograph taken November 22 1897 (Shields Vol. 1), p. 732. Now compare those with Exhibit 260, being shore protection to spur dam built by Twiggs, photograph taken on November 22, 1897. The size of the stakes required to hold down the fascines is compared with a hat shown in the picture, the ends of the stakes looking like stumps of trees (See testimony, Shields Vol. 1), p. 732. Compare also Exhibit 261, being photograph of spur dam originally built by the Gaynors and repaired by Twiggs. All the top work shown in the photograph being put on by Twiggs, and illustrates the end of the fascines used by comparison with increased height, see testimony (Shields Vol 1), pp. 732-733. See also Exhibit 262, being a photograph of spur dam and shore protection built by Twiggs, photograph being taken November 22, 1897 (See testimony, Shields Vol. 1), p. 733. It will be noticed from the photographs that the Gaynors were allowed to put in brick bats and anything to weight down the shore protection, and that their brush fascines had practically disappeared in November, 1897. This was six years after they were put in. The Twiggs work was in fine condition in 1897, which was four years after they were put in. Twiggs however visited them again about the first of August, 1900, and testifies that the condition of the spur dams as to preservation of fascines, stone work, etc., are practically the same now as when photographed, and that

this was true as well in regard to the Gaynor contracts as to Twiggs, contracts (Shields Vol 1), pp. 734-5. This was seven years after the Twiggs work was put in and therefore it illustrates the fact that the disappearance of the fascines from the spur-dams built by the Gaynors, as shown by the photograph was not due to rotting away from length of time, but was due to the fact, that it was built of brush material instead of poles as Twiggs was required to put in.

Under such treatment is it at all surprising that the Twiggs contract was not completed within the time required under its terms. But let us compare the different treatment received by the contractors under the Gaynor contract, with the treatment of Twiggs when he fell short in time.

On November 19, 1892, Carter wrote a letter to General Casey, Chief of Engineers, in regard to the Walsh contract at Augusta which is identified from his letter book (Shields Vol. 1), p. 769, and copied in record, page 770 and without any requirement that the contractor should write to Washington, etc., he writes to General Casey:

> "A recent freshet on that river has made it impossible for the inspector to determine when the work is properly done and the cold weather now prevailing makes it difficult for laborers to stand for any length of time in the water. In view of these facts I have the honor to recommend that in accordance with Paragraph 35 of the specifications for improving the Savannah River above Augusta, Georgia, William H. Walsh, the contractor for said work, may be allowed an extension of his contract for the period of six months."

Now let us see how Carter used his discretion under the contract with Twiggs which also had a similar clause to Clause 35, in regard to freshets. Twiggs commenced work about the first of August, 1893. About the 26th day of September under the provisions of the 35th clause of the contract, Carter granted him an extension of time of fourteen days on account of a freshet, and that without any additional

charge against the contractor (Shields Vol. 1), pp. 749-750. 763-764. Again on October 23rd, Carter gives Twiggs an extension of sixteen days, but this time it is conditioned that all expenses of inspection and superintendence be charged against him (Shields Vol. 1), p. 750. When this expired Carter refused to give him any further extension at all. He then put the harsh terms upon Twiggs (which was of course in the letter of the contract), that Twiggs lose the entire cost and profits of his work up to that time or enter into a supplemental contract by which Carter was allowed to do the work at Twiggs expense (Shields Vol. 1), pp. 751-752. The supplemental contract is in evidence (Defendant's Exhibit B) and bears date November 6, 1893. Printed Volume of Contracts p. 433.

* Before commenting on the manner in which this supplemental contract was carried out by Carter so as to swamp the contractor, let us notice the duplicity exercised by Carter towards Twiggs.

The defendants put in evidence a letter dated Augusta, Ga., October 25, 1893, from A. J. Twiggs to Honorable J. C. C. Black, Congressman from the District in which Augusta is situated, in which Twiggs refers to the freshets which had, among other things, delayed the work and stated that Carter had examined his work and said it was satisfactory, and stating that if he could get monthly payments for the work already done he could carry on the work. Carter had not paid him because the contract prvided that $10,000 of work should be done per month, and saying to Black, "Captain Carter says he cannot pay me anything on the work unless the Secretary of War authorizes him to do so and advises me to write to you and get you to see the Secretary and ask him to allow the payments, that he will recommend it if the matter is referred to him" and see (Shields Vol. 1), pp. 753-754. Twiggs testified that Carter actually did so

P. 326. Note

*Twiggs testified that the principal delay in not doing more work rapidly was that Conant would not allow him to work at but one jetty at a time. (Vol. 4, p. 1661.)

That he could not work more men than he did on one jetty at a time. (Vol. 4, p. 1686.)

advise him (Shields Vol. 1), p. 766. What Carter actually did, however, is shown by his letter to General Casey of October 30, 1893, put in evidence by the defense (Shields Vol. 1), p. 753, wherein he says:

> "Twiggs has been at work under his contract nearly three months and has not done in all that time as much work as the specifications require to be performed in fifteen days. He was delayed about fourteen days by high water, but the reason for the very unsatisfactory progress made is that he is not familiar with the work and has an unskilled foreman and insufficient force of laborers. From present indications he will not be able to complete the work at all for several months. This delay will cause the loss of the best working weather and may postpone the completion of the work until next summer. The terms of Mr. Twiggs' contract prohibit any payment until all the conditions of the contract have been complied with. The condition of the contract not having been fulfilled, no payments have been made. Mr. Twiggs was informed that none could be made until the terms of the contract was carried out. He is in error in stating that I had advised him to request that I be allowed to make payments, and that I would recommend payment, or that I stated the progress of the work to be satisfactory. I distinctly informed him the progress of the work was very unsatisfactory; that I should make no payment unless the terms of the contract were changed or unless I was ordered by superior authority to do so under the terms of the present contract."

How different the treatment of Walsh. November was too cold for Walsh to work hands in the water, but not too cold for Twiggs. The alleged cause of Twiggs' trouble was using an unskilled foreman, although he was the same foreman Walsh had used, and they were using practically the same hands. After Carter forced Twiggs into the supplemental contract of November 6, 1893, under which Carter carried on the work at Twiggs' expense, he placed Conant in charge. Conant took charge of the works as well as of Twiggs' lighter and steamboat and employed a large number of hands of a

P. 327. Note

*On Jan. 1, 1894, Carter wrote the Chief of Engineers recommending the annulment of the Twiggs contract, putting it on the ground of a personal assault made by Twiggs on Conant, but it was not annulled. (Vol 8, p. 3948–9.)

very indifferent kind, some of them living so far away from the work as to have to walk seven miles to and from their homes (Shields Vol 1), pp. 723-724. Conant refused to use stone from Twiggs' quarry, which was near by. Conant paid $1.50 a cubic yard to another quarryman for stone, while Twiggs could have furnished it out of his own quarry at seventy-five cents per cubic yard (Shields Vol. 1), pp. 724-725. He complained to Carter but got no relief from it (p. 725). By this means, under Carter's direction, the cost of the supplemental contract was run up against Twiggs to $7,000. (Shields Vol. 1), pp. 726-727, and the total contract price of the work done under the supplemental contract was about $4,000 (p. 727), making a loss to Twiggs of $3,000. The total amount of the work done by Twiggs himself under his contract at the contract prices was about $13,000 and the cost of it to him was a little more that $13,000 (p. 728). Can it be doubted under this evidence that it was Carter's deliberate purpose to break down Twiggs in the performance of his contract, for the purpose of preventing competition, in view of the difference in construction of similar contracts when done by Twiggs and done by the defendants?

CAPTAIN CARTER TELLS CONANT TO APPLY IN GREENE & GAYNOR WORK MORE LENIENT RULE THAN CARTER HAD APPLIED TO TWIGGS.

Mr. E. R. Conant, the young civil engineer through whom Carter had enforced his oppressive rulings on the Twiggs contract of 1893 at Augusta, was after the conclusion of that work put in charge of the work under the Anson M. Bangs contract No. 5811, at Cumberland Sound, testified (Court Martial Record Vol. 4), p. 788:

> "He (Carter) told me that he didn't wish me to carry out that contract, or to build the fascines in the manner that I had just built them at Augusta.
>
> That he didn't wish me. I cannot remember the words. I can give you the meaning—that he didn't wish the contractor pressed in that work."

P. 328. Note

*Conant, the Assistant Engineer under Carter, testified that the facilities at the Twiggs quarries were equal to those at Rees' quarry where Conant got the stone he used under the supplemental contract, but he was instructed by Carter not to take Twiggs' stone. (Vol. 4, p. 1597.)

The contractors were paid $159,097.10 on that Cumberland Sound contract, and made $82,000 profit on it. See, *ante*, p. 213.)

CAMPBELL FORD, WITNESS FOR DEFENDANTS, ON THE TWIGGS CONTRACT.

It will be remembered that the Twiggs' contract was made on July 5th, 1893 (*ante*, p. 318), and that the oppressive interpretations of the specifications and requirements made by Carter, which he had not so made under previous contracts with the Gaynors, were all made between July 5th, 1893, the date of the contract and November 6th, 1893, when the Supplemental Contract was made by which Carter practically took the work out of the hands of Twiggs (*ante*, p. 326), and placed it in the hands of Conant.

Ford testified that he never went to Augusta on the Twiggs' contract as inspector or foreman until after work had commenced under the Supplemental Contract of November 6th, 1893 (Shields Vol. 3), p. 2548-2549, 2537.

He went there then as foreman under Conant (Shields Vol. 3), p. 2537.

His testimony, therefore, can in no way contradict what Twiggs testifies are the facts which led up to the taking of the contract out of his hands by Carter.

His testimony as to what occurred after he went there in November is, however, instructive.

On direct-examination he testified, that it was only about a four foot length pin required of Twiggs to hold the fascines down for shore protection (Shields Vol. 3), p. 2540.

On cross-examination, being shown Carter's written instructions to Conant, he takes that back and says they were six feet in length and over.

He says the brush used in the Twiggs' contract was better

than that used in the Gaynor contracts at Savannah (Shields Vol. 3), pp. 2543-2546.

On direct-examination he testified that Twiggs had never made any complaints to him as to being wrongly treated (Shields Vol. 3), p. 2548.

On cross-examination he admitted that Conant was the Assistant Engineer in charge, and that the tension between Twiggs and Conant growing out of the conduct of the work was so strong that on one occasion Twiggs knocked Conant down (Shields Vol. 3), p. 2553.

LIEUT. THOS. H. REES. WITNESS FOR DEFENSE ON TWIGGS CONTRACT AT AUGUSTA.

Lieut. Thos. H. Rees, shortly after he graduated, served a time in the Savannah District under Carter, but left the District in April, 1893. (Shields Vol. 3), p. 1895.

Rees was sent by Carter to Augusta to inspect the work under the John F. Gaynor contract of September 9, 1891, No. 4655, below Augusta. (Shields Vol. 3) p. 1896.

On September 15, 1891, Carter wrote a letter of instructions to Rees (Shields Vol. 3), p. 1918:

In this letter Carter says:

> "I wish you would also prepare a working plan for the work at Augusta, as I shall want you to take full charge of that.
>
> *The specifications are elastic,* and the contractor has been given a memorandum to enable him to begin getting out material, etc."

Rees had left Savannah in April, 1893, before the introduction of the era of the use of the multiple mat launched from barges.

P. 330. Note

*Lieut. Rees testified that he was not engaged at the Augusta work in 1891, but for about a week, he simply laid it out. That the putting in of brick bats in place of stone on that work by the Gaynors was not in accordance with the specifications and he did not know of it at the time. (Vol. 6, p. 3129.)

REES IN DEBT TO CARTER.

When Rees left Savannah in 1893, he went away owing Carter $300. He returned to Carter on May 2, 1893, $187.55 (see Rees' letter to Carter, May 2, 1893, Wyman Vol. 1), p. 237. It does not appear when he repaid this balance to Carter if ever. It appears that during the time Rees was under Carter, it was his habit to get money presumably in the way of advances frequently. See Carter's Check Stub-Book, Exhibit 43 (Shields).

Check No. 210, to Thos. H. Rees, May 2, 1890, Loan—$90.

Check No. 211, to Thos. H. Rees, May 2, 1890, Loan—$50.
Exhibit 44 (Shields).

Check No. 279, to Thos. H. Rees, November 17, 1890, $100.
Exhibit 45 (Shields).

Check No. 330, to Thos. H. Rees, March 17, 1891, Loan—$100.

Check No. 334, to Thos. H. Rees, March 21, 1891, Loan—$100.

Exhibit 59 (Shields)

Check No. 27, to Thos. H. Rees, December 23, 1891, Loan—$100.

It also appears that Carter got a private contract to build a bridge at Rome, in 1892, which he got Rees to supervise and divided fees with him on it.

See Exhibit 60 (Shields) Carter's Check Stub-Book for payments on same.

Check No. 69, to Thos. H. Rees, April 11, 1892,—$100.
Exhibit No. 69 (Shields) payment on same.

Check No. 557, September 16, 1892,—$100.

Exhibit 52 (Shields), Carter's check Stub-Book, shows:

Check No. 661, to Thos. H. Rees, February 14, 1893,—$100.

Check No. 675, to Thos. H. Rees, March 25, 1893,—$300.

It appears also that during Rees' tutelage under Carter, he fell into very bad questionable business methods.

It also appears that a survey at Brunswick Harbor was made by Lieutenant Rees in 1892. The surveying party had rooms at a hotel in Brunswick, kept by Warren Leland, Jr.

On December 23, 1892, Rees, being then in Savannah, wrote a letter to Marion Twiggs, Assistant Engineer at Brunswick, Georgia. (Court Martial Record Vol. 12), p. 2740, in which Rees instructed Marion Twiggs as follows:

> "Get signatures on rolls for all the men you have employed, add for your board and lodging during this month, and for the use of the office room at the hotel. Everything should be put on the pay rolls that can be, and you will get the addresses of all the persons to whom money is due so that it can be sent to them from here."

The letter was signed:

> "By direction and during the absence of Capt. Carter." Thos. H. Rees, 1st Lieut. Corps of Engs. U. S. A."

In pursuance of these instructions, Warren Leland, Jr., was put on the pay rolls (Exhibit 418, Court Martial Record), as a rodman at $1.50 per day, and the pay rolls were turned in by Captain Carter as a voucher to his account against the Government for his expenditures. But Carter, on January 6, 1893, remits his check to Warren Leland, Jr., for $34.50, saying it was "in payment for rooms occupied by United States survey party." (Court Martial Record Vol. 13) pp. 2829-2830.

Rees admits that Warren Leland, Jr., was not a rodman on that survey. (Court Martial Record Vol. 13) pp. 2829-2830.

P. 332. Note

*See Lieut. Rees' admission of the subterfuge resorted to by him while in Savannah (with Carter) in order to draw forage allowance from the Government for two horses which he did not really own. (Vol. 6, pp. 2899 to 2902.)

REES TAKES AWAY GOVERNMENT CABINET BOOK AND FILE CASE.

It appears also (Court Martial Record Vol. 13), pp. 2792 to 2795, that Captain Carter had purchased with Government funds an expensive cabinet book and file case, which he kept off the property returns of his office, which he was required to keep. That when Rees left Savannah in April, 1893, Carter allowed Rees to carry it away from Savannah. That Rees took it with him to New York City and then to West Point, where at the date of the Court Martial, Rees had it in his private office at his house. Rees testified under cross-examination (Court Martial Vol. 13), p. 2794:

"I considered them the property of the Government, and held myself in readiness to return them to this (Savannah) office whenever they were called for."

"Q. If they were not on the property returns, how could Captain Carter's successor know anything about them?

A. I don't know anything about the returns—whether they were or not. He would not unless his assistant or clerks told him about them."

Rees had had this case over five years and never returned it, until the matter was sprung at the Court Martial trial.

LIEUT. REES RETURNS TO SAVANNAH IN 1898 TO HELP CARTER OUT OF HIS TROUBLES.

Lieutenant Rees testified (Court Martial Vol. 14), p. 3218, that on February 19, 1898, he and Mr. Henry C. Ripley visited Augusta, Georgia, for the purpose of inspecting the work up there that had been done under the Greene & Gaynor contracts. They took with them copies of the photographs, which A. J. Twiggs had taken of the jetties at Augusta, and which had been introduced in evidence as Government Exhibits 56 to 63 (Court Martial).

He testified that he examined the work done by Greene & Gaynor in 1891, with what was done by Twiggs in 1893, and found that the difference in the then condition of the

Q. Which you testified about when you were here before?

A. Yes, sir; when the round pegs were driven.

Q. And as a matter of fact, he compared your work with your own work, instead of Gaynor's work with your work?

A. He did."

P. 336 Note

*Lieut. Rees, in his testimony, attacked Capt. Gillette for having, as he claimed, attempted to influence him against Carter by threats, under cross-examination he reduced it to this:

"He Gillette did not suggest anything except that I should not allow my prejudice and feeling to influence my testimony."

And:

"The latter part of his statement was in somewhat threatening manner, that if anyone got in his way he would hit them. If it was his best friend he would hit them hard to hurt them if he could." (Vol. 6, p. 2926.)

Gillette testified that Rees mixed up two conversations together as if they were one. The latter had reference to Rees' connection with a Government book case bought by Carter on false pay rolls, and which Rees had carried away with him from Savannah and about which Rees had said: "I hope that will not have to come out."

He and Rees had been friends, and he put Rees on notice that if he tried unfairly to bolster up Carter's defense on the false pay rolls, etc., Rees' connection would be shown up in the interest of justice.

He denied that he threatened Rees. (Vol. 8, pp. 4171 to 4173.)

Fraud in the Actual Construction of the Work.

We have already seen that the methods pursued by Carter had resulted in an increase commencing in the year 1891 of 300 per cent., in the cost of material to the Government on the face of the contracts. In other words, that the specifications gave Carter the opportunity to select that class of mattress which increased the cost to the Government, to four times the prices previously paid for the same material, and that Carter did select the particular class of mattress which secured to the contractors that increase, and that this increase was secured to the contractors by that means, independently of any fraud which may have been committed by putting in the work in a different manner from that called for in the specifications. Let us now examine the evidence as to the manner in which the work was actually executed. (For Defense, see *post*, pages 230 to 277.)

THE DESIGNS OF THE FASCINE MATTRESSES BID ON. 1892 TO 1896.

FASCINE LENGTHS PRESCRIBED.

In the clause descriptive of the fascines, in the contracts below mentioned, the lengths of the fascines in the different contracts as stated in the specifications (see Volume of Printed Contracts) are as follows: Vol. 22

Length of fascine.

No. 4820 Sept. 16, 1892, Cumberland Sound, 60 to 100 feet.
No. 4960 Oct. 22, 1892, Savannah Harbor, 12 to 100 feet

Nov. 15, 1894, Cumberland Sound, 30 to 100 feet.
April 20, 1895, Darien Harbor, 30 to 100 feet.
Oct. 8, 1896, Savannah Harbor, 30 to 100 feet.
Oct. 8, 1896, Cumberland Sound, 30 to 100 feet.

ıe exception of this difference stated as to the lengths es, the wording of the specifications descriptive of the two designs of brush mattresses which appear in all of these contracts is precisely the same.

This description in full as well as that of the 1st design log mattress taken from contract No. 4820, is as follows:

MATTRESS SPECIFICATIONS, CONTRACT NO. 4820.

Vol 22 P 10132

Mattresses.—Any of the following designs for mattresses may be used at the option of the engineer officer in charge:

First Design.—This mattress is a raft of round logs not less than twelve (12) inches in average diameter, and not less than nine (9) inches in diameter at the small end, placed in close contact, side by side, and firmly held by transverse pole-binders spiked or bolted to them. The binders will be smaller logs or poles not less than five (5) inches in diameter at the small end, and placed not more than eight (8) feet apart, and those on the outside will be close to the ends of the logs. There will be placed upon the raft of logs a layer of live wood brush sufficient to give six (6) inches in thickness in the finished work, secured in place by poles lashed to the binders of the raft.

Second Design.—This mattress will consist of a layer of closely-placed fascines, crossed at right angles by a second

layer of like fascines, placed at intervals of six (6) feet. The brush must be carefully laid so as to break joints and to make a continuous fascine extending completely across the mattress. The fascines must be firmly held between binding poles made of live saplings of pine or other timber of a kind approved by the Engineer Officer in charge. These must be straight and of slight taper, and must not be more than five (5) inches in diameter at the butts, nor less than two (2) inches in diameter at the tips.

They must be spliced together with long scarf joints in a manner satisfactory to the engineer officer in charge and so as to extend completely across the mattress. Either one or two layers of these poles will be used at the top and at the bottom of the mattress, as may prove necessary for holding the mattresses until in place and ballasted. The binders in each layer must be placed parallel to each other at intervals of six (6) feet, and as required by the Engineer Officer in charge. The fascines and binders must be firmly compressed and lashed together at intervals of six (6) feet in a manner satisfactory to the Engineer Officer in charge.

Vol. 22 C/0123

Third Design.—This mattress will consist of a bottom grillage of poles of live saplings of pine or other timber of a kind approved by the Engineer Officer in charge. The poles must be straight, of slight taper, of an average diameter of from four (4) to five (5) inches, and not less than three (3) inches at the small end, and must be placed from four (4) to eight (8) fet apart between centers, both longitudinally and transversely, and spliced together with long scarf joints in a manner satisfactory to the Engineer Officer in charge. Upon this grillage will be placed a layer of closely compacted fascines surmounted by a top grillage similar in design to the one at the bottom. The poles of each grillage

will be securely fastened together by suitable wire or rope lashings, and the upper and lower grillages will also be securely fastened together in such manner as the Engineer Officer in charge may approve.

In any of the foregoing designs the logs and poles used may be loblolly or other timber of a kind approved by the Engineer Officer in charge, and must be sound, of gentle taper, and sufficiently straight. Logs will not be used that do not fit closely enough together to hold all the stone securely, even without the use of brush. No extra allowance will be made for logs that are larger than the sizes called for in these specifications. Towing beckets, buoys and lines, and range masts must be placed as directed. The United States reserves the right to make such alterations in the details of construction, or in material, as may be deemed best during the progress of the work, providing that should such alterations materially vary the cost of the mattress the price to be paid shall be increased or diminished proportionally, such change of price being agreed upon before the alterations in the mattress are made. The size of the mattresses will be fixed by the Engineer Officer in charge from time to time. In general they will be from sixty (60) to one hundred (100) feet in width, have such lengths as may be convenient for handling, and will be laid in sections of convenient length in juxtaposition, or with such lap as may be required. No mattress will be accepted until properly placed in the work and secured there by a layer of stone of such thickness, not exceeding 1 to 2 feet, as may be required by the Engineer Officer in charge. Gaps between the edges of adjacent sections of mattress will be filled with stone by the contractor, to be paid for at a price eqal to the price of mattress work. Portions of the mattress lying more than four (4) feet outside of the

position assigned will not be accepted or paid for. Separate bids for the designs for mattresses are not desired. One price only should be given in the proposals, and the price so stated will be understood as referring to any of the designs which may be required by the Engineer Officer in charge.

38. *Fascines.*—All fascines will be made of live brush of cedar, water oak, myrtle, sweet gum, or any other variety of wood approved by the Engineer Officer in charge. The fascines will be from sixty (60) to one hundred (100) feet in length, and must be compressed tightly by an approved form of choker, to a diameter of nine (9) inches at intervals of two (2) feet, where they must be bound firmly with wire or tarred rope of approved strength. The brush used shall be as straight and well trimmed as can be obtained; the fascines shall be carefully and thoroughly made and handled with care. They shall be piled on shore or on barges for measurement in such way as the Engineer Officer in charge may direct.

HOW THE THIRD DESIGN CARTER MATS WERE CONSTRUCTED, AS ACTUALLY PUT IN, WHEN THEY WERE PUT IN SINGLY.

We have already seen that Drawing Exhibit 191, represents the form of construction of the Third Design Carter mat as required by the specifications. Cooper, the assistant engineer testifies that when the work was first started under the 1892 contract for Savannah Harbor, the brush mats were put in singly and modeled after the third design. Exhibit 191 (Shields Vol. 1), pp. 318, 519, 512.

This construction of the third design mat, as interpreted in the actual work under all the contracts, required that the fascines should be placed on top of and across the top poles of the lower grillage, as shown in Drawing Exhibit 191, and not between the top poles of the lower grillage (Testimony of C. Ford for the defense (Shields Vol. 3), pp. 2569-2570; W. N. Connell for defense (Shields Vol. 3), pp. 2617-2618-2622-2623; Thomas F. Gaynor for defense (Shields Vol 3), p. 2599; J. H. Gaynor for defense (Shields Vol. 3), pp. 2585-86.)

A full grillage of poles as used in these works, is described as a set of poles lying parallel to each other and spaced 6 or 8 feet apart, crossed at right angles by another set of poles similarly spaced (Shields Vol. 1), p. 478.

If one set of these poles be taken away, the remaining poles which will consist only of a set of parallel poles, is called a *half grillage* (Shields Vol. 1), p. 479.

A reference to the specifications and to the drawing, Exhibit 191, will show that the 3d design Carter mat required a full grillage of poles underneath the layer of fascines and a full grillage on top of the layer of fascines.

THE SINGLE MAT, TO BE PUT IN ONE AT A TIME, IS WHAT IS CALLED FOR IN THE SPECIFICATIONS AND WHAT EVERYBODY BID ON.

Captain Gillette testified that the mattress which was called for by the specifications was a single mat (Shields Vol. 1), p. 476. And that the multiple form of construction as he saw it actually going into the work did not conform to the specifications (Shields Vol. 1), pp. 479-480.

Major C. McD. Townsend, the expert witness for the defense, from the Corp of Engineers, who testified for Captain Carter in the Court Martial, and who repeated his testimony before Commissioner Shields, testified as follows:

"The only way to absolutely conform to this third design would be to build single mats, covered with stone,

P. 343. Note

*Townsend testified that the Engineer could not have required the contractor under Carter's specifications to put in the multiple mat. (Vol. 6, p. 2981-2.)

To the same effect is the testimony of Col. W. T. Rossell, expert witness for the defense. (Vol. 6, p. 2999.)

Lyman E. Cooley, expert engineer, witness for defense, testified that the theory of the Carter specifications was that each mattress as specified in the contract was to be sunk singly with the stone put on the top of each to the depth of 1 to 2 ft. (Vol. 18, p. 8577.)

Carter testified before the Court Martial as to the manner in which the single mats had been sunk prior to the change to the multiple mat, as follows:

"Well, the way that came about was as follows: Mattresses had been built on what are known as ways, and then launched into the river and towed in the water to the works. The free flotation of a brush mattress is very low and it became necessary in towing those mattresses very often to take casks or dry logs, or something which would float very well, and place alongside of them, so that they could be towed to the place of sinking, and notwithstanding that, sometimes it would be difficult to get them in place. That work was carried on in that way, the mattress being brought to the place, and then being held by lines until the range markers on the mattresses could be brought into line, the line on which it is desired to sink the mattresses. A single load of stone was then thrown from the barges placed on either side of the mattress, and when in the opinion of the inspection enough stone was placed thereon to sink it, the lines were slackened and the mattress was lowered within a short distance of the bottom; then ranged in position and the line slackened instantly so that the mattress might settle into place; then on top of that another similar mattress was placed and on top of that another, and so on, until the desired height was obtained." (Vol. 7, p. 3595.)

And see photos of single mats afloat.

Dft. Exh. 54, Ct. M. identified (Vol. 7, p. 3633.)

Def. Exh. 72, Ct. M. identified (Vol. 7, p. 3636.)

Carter testified further that he had to put a load of stone on each single mattress to get them in place:

"And a careful examination of that work showed that we were not getting much vertical height, although we were spending a great deal of money, and of course it worried me greatly because I feared I would not be able to carry out the work within the limits of the appropriation."

He then gives his reasons for adopting the multiple mat. (Vol. 7, p. 3596.)

A. Not specifically, but there is a discretion given in all these specifications, I think, which will warrant that modification." (Shields Vol. 3) pp. 1737-1738.

He then says he refers to this clause in the specifications as giving that discretion to the Engineer:

"*The United States reserves* the right to make such alterations in the details of construction, *or* in material, may be deemed best during the progress of the work, providing that should such alterations materially vary the cost of the mattress, the price to be paid shall be increased *or diminished* proportionately, *such change of price* being *agreed upon before the alterations* in the mattress are made." (Shields Vol. 3) p. 1741.

It will be noted that the reservation here is not to the Engineer in charge, but to "The United States, and that it is just such a change as was allowed by General Gilmore, in the John F. Gaynor contract, No. 3282, at Savannah by supplemental contract (Exhibit 75), made by the Secretary of War (*ante*, p. 251). And that under Gilmore's view the power to make such change in a contract let by public competition resided only in the Secretary of War (see Gilmore's letter, *ante*, p. 268). And this is what General Craighill testifies is his view. (Shields Vol. 3) pp. 1779-1780.

Wisner further testified that the specification for the third design "calls for a certain described single mat per square yard, and then allowing the Engineer's discretion in regard to construction." (Shields Vol. 3) p. 1747.

Wisner further testified that the multiple mat made of two second design mattresses by leaving out the cross fascines and leaving only half grillage between the courses would cost less than the two full mats (Shields Vol. 3), p. 1736-7. He says:

"Q. That is to say, by taking out the two sets of cross fascines, and the full grillage, and a half grillage more, it would be just that much material less?

A. Just that much material taken out.

Q. And make that cost considerably less, unless it was supplied in some other way?

A. In some other way, and with a change in specifications—I can't say what was done—but the engineer undoubtedly would specify that that material be replaced with kind; that is of some other material in place of it." (Shields Vol. 3) p. 1737. Vol. 25-P. 12147

Wisner further testified:

That the multiple mat as put in by Carter is a modification of the specifications (Shields Vol. 3), p. 1750. That a change from the single mat described in the specifications to the multiple mat is a thing to be agreed on (Shields Vol. 3), p. 1752.

In reply to the question as to whether the multiple mats conformed to the specification of the third design without modification he said:

"They would be that much material short whatever there was out, provided the brush is left identically the same." (Shields Vol. 3) p. 1752. Vol. 25-P. 12160.

L. Y. Schermerhorn, for the defense, also shows by his testimony that, while he regarded the multiple mat as put in by Carter as a change from the mattress described in the specifications, that he regarded it as a permissible change within the discretion vested in the Engineer.

He testified on direct examination:

"Q. Would you consider such a method of construction a departure, or change from the specifications in the sense required by the specifications that the United States might make a change, if the cost was increased or diminished assuming that the contractor did not claim any increased cost?

A. I think *such change* would be permissible under the specifications." (Shields Vol. 3) p. 2028. Vol. 25-P. 12436

the clause giving the Government the right to modify the mattress in details), answered that it was permissible.

Rutherford R., 2475. Vol 25 @12883

Burgwyn R., 4205-6-7, 2532-3-4. Vol 25 @12940-1-2

THE CONTINUOUS THREE COURSE MATS.

The first modification and departure from the specified design of mattress prescribed in the specifications for the big contract of 1892, was the introduction of the three course "continuous" mat built at the jetty, and constructed over the end of a gin barge.

Arthur S. Cooper, Assistant Engineer under Carter, testified (Shields Vol. 1), p. 518-519:

> "When the contract (No. 4690 of 1892) first started, they were put in singly, and each mat towed to position and sunk by itself, but later on they used three courses at time, sunk off the end of a gin barge: continuous mats."

Under that method the brush and poles were brought out to the jetty in lighters not as mats but were constructed into mats on the gin barge, and played out over the end of the barge. (Shields Vol. 2) p. 919-920.

* The continuous mat was built and launched as it was built, it was all one mat until they stopped work (Cooper's testimony, Shields Vol. 2), p. 921.

Defendant's Exhibit 150 (Wyman), compilation of trimonthly reports for Savannah Harbor contract of 1892, show a large number of these continuous mats, sunk in several courses. Some of them three courses; some four courses and a few five courses. And stone put only on the top course.

P. 346. Note

*See Carter's testimony before Court Martial to same effect. (Vol. 7, p. 3596.)

This form of construction was a great departure from the specifications, because the bidding on which the contract was let, called for each mattress to be sunk separately with its load of stone on it.

This method was succeeded about September 1, 1893, by the full fledged "multiple mat."

THE INTRODUCTION AT SAVANNAH OF THE MULTIPLE MAT, SEPT., 1893.

Arthur S. Cooper, Assistant Engineer under Carter, was put on the big contract of 1892 at Savannah Harbor, on August 1, 1893 (Shields Vol. 2), p. 914. He testified (Shields Vol. 1), p. 519:

"After the storm in 1893, when the plant was more or less destroyed, they started work on what is known as the 'multiple mats.' That is, the entire height of the dam was built on barges and sunk in place at one time: one lauching.

Q. That was commenced in about 1893?

A. That was commenced after September 25, 1893.

Q. Putting in the mats in a number of courses at the same time?

A. Whatever the dam required, whatever number of courses for that particular locality required, was built on the barge entire, wired together and lanched into position and sunk in place.

Q. That is what you call a multiple mat?

A. Multiple mat.

Q. How many courses were usually put in at a time?

A. I think taking the entire average through the work, they averaged about seven courses. Some were only two and some were ten, and I think one went as high as thirteen.

Q. At one time?

A. At one time. They would probably average about six or seven course mats."

Carter himself admitted before the Board, that his multiple mat construction was a modification of his third design mattress.

(Board Record Vol. 2), p. 483. Vol 3 P696

"Q. (By Major Adams.) I would like to have Captain Carter state what he used at Cumberland Sound?

A. (Captain Carter.) Very well. What I used was the third design of brush mattress *with the following modifications:* that when these mattresses were built, *one mattress on top of another*, the bottom grillage of the upper mattress was omitted and the top grillage of the mattress underneath used, the amount of fascines being increased to make an equivalent of the poles which would have been put in that grillage."

Carter also admitted that he "modified" the third design mattress by allowing the substitution of 15 to 18 feet fascines in place of the 30 to 100 feet continuous fascines specified. (*Ante*, p. 278.)

CARTER'S AUTHORIZATION OF THE MULTIPLE MAT. MAY, 1893.

The first written instructions from Carter authorizing the construction of the "multiple" mat, launched from a barge, appears in a letter of Carter's to C. A. Felber, of May 5, 1893, in Carter's letter press book for Jekyl Creek, p. 67, and related to the work at Jekyl Creek under Contract No. 253 of March 1, 1893, in which Carter says. Vol 4 P1618

"Savannah, Ga. May 5, 1893.

Mr. C. A. Felber,
Inspector, Fernandina, Fla.

Sir:

As soon as you know when work will be completed at Cumberland Sound, you will notify this office, as previously instructed, in order that the ranges for work at Jekyl Creek may be established.

These ranges having been established, you will extend the foundation course with brush mattresses of the third design, 40 feet in width, followed by a second course 30 feet in width, upon which will be placed, if necessary, a

third course 20 feet in width. Each course should be built of a double thickness of mattresses, *the grillages being of good sized poles, in order to obtain vertical height.*

These mattresses may be built on ways constructed on barges and launched in place, if the contractor so desires.

By building the mattresses in two courses, you will be able to economize on stone." etc. etc.

Very respectfully,
Your obedient servant,
O. M. CARTER.
Capt. Corps of Engs. U. S. A."

This was, however, only a two course multiple mat.

THE GIN BARGE FOR LAUNCHING MULTIPLE MATS.

There was a line of uprights rising through the center of the barge from stem to stern. On the uprights were pivoted cross poles. These cross poles at each end, were propped up from the deck by movable uprights. The cross poles therefore, made a horizontal platform.

It was upon this platform resting upon its supports above the deck of the barge that the multiple mats were built seven, eight and ten courses high. (Shields Vol. 1) pp. 513, 473, 487, 488. (And see *post* p. 365.)

These multiple course mattresses were built at the waters edge near the brush camps, some times ten or twelve miles from the jetty, where they were launched. Cooper testified (Shields Vol. 1) p. 521:

> "I never saw the mats until they were brought to the river camps for placing in the work. They were brought there complete ready for use, and I had no opportunity of seeing them except from the outside."

The method of launching the mats, was to knock out the props from under the ends of the cross poles on one side of the barge, and the mattress slid off into the water (Shields Vol. 1) p. 513, 473, 487, 488.

DRAWING ILLUSTRATIVE OF A TWO COURSE MULTIPLE MAT.

Thomas F. Gaynor, a foreman for the contractors, and witness for the defense, testified (Shields Vol. 3), p. 2599-2600: That Drawing Exhibit 331, Shields, fairly represents the form of construction of a two course multiple mat.

See also testimony of A. Y. Schermerhorn for defense to same effect (Shields Vol. 3), p. 2039-2040.

DETAIL DESCRIPTION OF THE MULTIPLE MAT.

Mr. Cooper, testified that these multiple mats were built on a frame or "gin" on the deck of a barge at the brush camps. The barge was towed to the jetty, and the multiple mat dumped off at the jetty and sunk with stone. As built on the barge the construction of the multiple mat is thus described by him. (Shields Vol. 1) p. 514:

COOPER'S DESCRIPTION.

(1) A bottom grillage of poles: Just one tier of poles running lengthwise of the barge, and another running crosswise, the poles spaced 8 feet apart, transversely and longitudinally, the longitudinal poles being on top.

(2) On top of this grillage of poles there would be a solid layer of bundles of brush. The bundles of brush were placed on top of the longitudinal poles. The bundles of brush would be ordinary brush just bundled together and tied with lath yarn at intervals of about 4 or 5 feet. The bundles would be about 16 feet in length. The bundles were not connected together to form a complete fascine running clear across the mat. They were just laid in, touching with

the ends abutting against one another, to make the layer across the mattress.

The bundles were not usually packed very tight. There was sometimes a space as large as the width of the bundles apart, but there was a layer of brush all the way across.

(3) On top of this first layer of brush bundles, running crosswise the bundles, there would be placed a half grillage of poles, spaced 8 feet apart.

(4) On top of this half grillage of poles, would be placed another layer of bundles of brush.

(5) On top of this layer of brush bundles were then placed a half grillage of poles.

(6) On top of this half grillage of poles would then be placed another layer of brush bundles.

(7) On top of the last layer of brush bundles would be placed a full grillage of poles.

Each one of these layers of brush bundles, were treated by Carter as if it was a complete mattress of the third design in the specifications of the contract, and paid for by the square yards of surface in such layer.

And yet Cooper testified (Shields Vol. 1), p. 516: That that construction gave only one-half as many poles for the bottom and top layers of brush bundles as were called for by the specifications for the third design. And that each intermediate layer of brush bundles only had one-fourth the poles required for such third design mattress.

W. N. CONNELL, (WITNESS FOR DEFENSE) DESCRIPTION OF THE MULTIPLE MAT

Mr. W. N. Connell, a relative of the Gaynors, and a foreman in the brush camps, in his testimony for the defense thus describes the multiple mat as it was put in work (Shields Vol. 3), pp. 2622-2623:

(1) A bottom grillage of poles, consisting of poles spaced

about 6 feet apart running in one direction and crossed by poles at right angles to them spaced about the same distance apart. This is what is called a full grillage.

(2) Next a layer of fascines is laid *across the top* poles of that bottom grillage, the fascines being at right angles to the poles on which the fascines rested.

(3) Next you put a half grillage of poles on top of that layer of fascines, the poles being run at right angles to the fascines.

(4) Next on top of that you put another layer of fascines running at right angles to the poles on which they rested.

(5) And so on until you get to the top when you put a full grillage of poles on.

To like effect is the testimony of the following witnesses for the defense:

Campbell Ford, Inspector (Shields Vol. 3), p. 2544.

J. H. Gaynor, Contractors' Foreman (Shields Vol. 3), pp. 2685-6.

Thos. F. Gaynor, Contractors' Foreman (Shields Vol. 3), p. 2601.

Thomas F. Gaynor testified, however (Shields Vol. 3), p. 2601: That sometimes a full grillage was put on at the next to the top course as well. So that in an eight course multiple mat, there would sometimes be:

(1) A full grillage at the bottom.

(2) A full grillage at the top.

(3) A full grillage at the next to the top course.

(4) A half grillage between the other courses.

P. 352. Note

*Carter admits that sometimes the full grillage of poles was put at the next to the top course as well as the top course of the multiple mat and explains that it was done to better hold the stone. (Vol. 18, p. 8772.)

MULTIPLE MAT BUILT IN STEPS.

These multiple mats were frequently built in "steps." A certain number of courses of the same length, and then upon these a certain number of courses of shorter length. (See Photograph taken by Captain Gillette of the 8 course multiple mat at Cumberland Sound, Exhibit 194, Shields.)

Thomas F. Gaynor testified (Shields Vol. 3), pp. 2600-2601, that when the multiple mat was made in steps, it usually had a full grillage of poles on the fascine layers at the steps.

"Q. When they had these larger mats, were they put in tiers, as indicated in this photograph, Exhibit No. 195 (Shields) and the photograph Exhibit 194 (Shields)?

A. Yes, sir; the same method was used in the 1892 contract as shown in those photographs; that is, in a general way. The slopes might be a little different in each individual case as circumstances required, but the same general idea.

Q. That is to say, three or four courses carried up the same width?

A. And then diminished the width?

Q. And then other courses on top?

A. Other courses on top.

Q. Were they constructed in the same manner as you described yesterday for the 1896 contract in regard to the bottom grillage and half grillages between the successive courses?

A. That was the general style of construction. Some of them may have had more poles in them, and some less, but tha twas the general average."

P. 353. Note

*See contract 6515 S. H. of Oct. 8, 1896. (Vol. 22, pp. 10357-8.) Or contract 4960 S. H. of Oct. 22, 1892. (Vol. 22, p. 10156-7.)

Relative to the designs of mats, and particularly as to the provisions that "no mattress will be accepted until properly placed in the work and secured there by a layer of stone of such thickness, not exceeding one (1) to two (2) feet as might be required by the Engineer Officer in charge."

Also see Carter's testimony as to how the mats were actually constructed singly with stone on each, and then another mat, then stone, etc., building up the jetty in that way until he afterwards adopted the multiple mat. (Vol. 7, p. 3395.)

In the criminal case against Greene and Gaynor, the court charged the jury that there was no ambiguity about the contracts. On that point he charged them as a matter of law that the multiple mats which the defendants admitted that they had put in were not a compliance with the 3rd design of the specifications, but they could consider the evidence on that subject to see if the departure was done without criminal intent.

U. S. v. Greene, 146 F. R., 852-3.

MATERIAL OMITTED BY CHANGE TO MULTIPLE FORM.

OMITTED POLES.

By referring to the specifications or to Drawing Exhibit 191 of Carter's third design mattress, it will be seen that each mattress was required to have two full grillages of poles.

A contractor who put in eight of those mattresses would have to supply 16 full grillages of poles, which in a mattress 50 by 100 feet, and with the poles "spliced with long scarf joints," as required by the specifications, would amount to a good deal both in material and labor.

Now, take an eight course multiple mat as they were built as described by either Cooper (*ante*, p. 350), or as described by Connell (*ante*, p. 351), in which there was a full grillage at the top and bottom and only a half grillage between the intermediate courses. It will be readily seen that there would be but five and one-half grillages of poles for the whole multiple mat. Or if the mattress was constructed with a step at the fourth course, and a full grillage was put in at the step, instead of a half grillage, it would make only six full grillages put in for the entire multiple mat.

In other words, in an eight course multiple mat, there was 10 out of the 16 full grillages of poles required by the specifications omitted. That is to say, about two-thirds of the poles that other bidders had to bid on were omitted by Carter in putting in the work. (*See post* p. 390.)

HOW MUCH WAS SAVED TO THE CONTRACTOR BY THE OMISSION OF POLES.

Now, a full grillage of poles in these contracts, as we have seen, means poles spaced not more than 8 feet apart running the length of the mat, crossed by another layer of poles similarly spaced running clear across the mattress.

The amount of poles in one grillage is therefore just the same as if, we had all the poles running the length of the mat, in sets of two poles side by side, and every set of two poles spaced 8 feet from the next set of two poles, measuring from the center of each set.

The evidence shows that a pole cost the contractors just about one-half the cost of a brush mattress. (*Post*, p. 381.) It follows that the cost to the contractors of the poles, in one omitted grillage, was equivalent to one layer of fascines spaced 8 feet apart running the entire length of the mattress. A fascine was required by the specifications to be 9 inches at the choke, and was according to the testimony, a little larger between the chokes, certainly as much as 10 inches in diameter. It is easy to calculate therefore, how many fascines laid side by side it would require to fill up the width of 8 feet or 96 inches of mattress. That is to say, dividing 96 inches by 10 inches, we get 9.6 inches, or a little less than 10 fascines of the required size laid side by side to make 8 feet of mattress width.

Now, as an omitted grillage of poles is equivalent to a layer of fascines spaced 8 feet apart, ten omitted grillages of poles is equivalent to enough fascines to make a complete layer of fascines laid side by side extending over the whole mattress. In other words, the poles omitted in an eight course multiple mat, were equivalent to enough fascines to make a complete one course mattress as Carter paid Greene & Gaynor for them.

In other words, the mere change of form to the multiple mat, caused an omission of enough poles from what other contractors bid on, to give Greene & Gaynor an extra single course mat in every multiple mat of eight courses.

If we take a single course of mattress 50 by 80 feet, it makes 4,000 square feet or 444.44 square yards, which at $1.10 per square yard, the price at Cumberland Sound, makes

$488.88. That is to say, by the mere omission of poles, the Government paid $488.88 on each multiple mat, at the rate it was paying, for omitted material.

CARTER ADMITS OMISSION OF POLES.

Carter admitted this omission of poles before the Board of Officers, but claimed that he had supplied an equivalent amount of fascine material (*ante*, p. 348).

No letter of instructions from Carter directing the supplying of fascines in place of omitted poles is to be found.

There is a letter from Carter to Inspector Ensley at Savannah, dated February 14, 1893 (Court Martial Vol. 16), p. 3542, in relation to work under the big contract of 1892, for Savannah Harbor, in which Carter allows "double" mattresses to be put in in lieu of single mats, and in which Carter says:

> "In this case it will not be necessary to have two grillages, the top grillage of the bottom sufficing for the bottom grillage of the second course."

This is a direction for omitting grillage poles, but there is nothing in that letter about the contractor supplying extra fascine material for the omitted grillage.

In fact, the testimony which we will consider later, will show that instead of supplying extra fascine material for the omitted poles in the multiple mat, there was actually a large amount of fascine material omitted also.

OMITTED FASCINES.

Geo. Y. Wisner, expert witness for the defense, testified (Shields Vol. 3), p. 1734: That there was practically no difference between the forms of construction of Carter's third design mattress (see Drawing Exhibit 191) from that of Carter's second design mattress (see Drawing Exhibit 190), except that the latter had the additional row of cross

fascines. That the removing of the cross row of fascines would make the second design practically the same as the third design.

This being true, it follows that Carter's multiple mat may be considered as a modification of the second design by the omission of the cross row of fascines (Drawing Exhibit 190), in addition to the omitted poles.

COST OF THE OMITTED MATERIAL DUE TO MULTIPLE FORM OF CONSTRUCTION.

By referring to Drawing Exhibit 190, and the dimensions marked on it taken from the specifications of Carter's second design mattress, it will be seen that the upper row of fascines which are 9 inches in diameter are spaced 6 feet or 72 inches apart. Therefore a 9 inch fascine occupies one-eighth of this space, and in any given mattress, if you omit these cross-fascines you omit a sufficient number of fascines to reach one-eighth across the mattress if land side by side. And it follows that if you take eight courses of such a mat, the number of cross fascines omitted would amount to a sufficient number to make a full layer of fascines completely across the mat. As there are also the equivalent of 9 complete sets of grillage poles omitted, after allowing a full top and bottom grillage and a full grillage at the middle "step," it follows that in an eight course Carter multiple mat, there is more than sufficient material omitted from that which the specifications require other people to bid on, than it would take to make a complete mattress under the specifications.

In other words, in furnishing an 8 course Carter multiple mat, the defendants furnished no more material than what other bidders by their bids proposed to furnish at the cost of 7 mattresses, thus making as clear profit, one mattress out of every eight. The usual length and breadth of the multiple mats put in at Cumberland Sound, were 100 feet by

50 feet, which is 5,000 square feet of surface to each course, equivalent to 555 square yards. This, at $1.10 per square yard, the price at Cumberland Sound under the 1896 contract is equivalent to $610.50, for a single course, and $4,884 for 8 courses. If the dimensions of the mat were only 80 by 50 feet, the size of the top courses, the cost would be $488.88, and 8 courses of same size would be $3,911.04.

COST OF THE OMITTED MATERIAL.

It will thus be seen that in every eight course multiple mat put in, that by the mere change in form of construction, the Government paid for, and the contractors gained in omitted material, what was equivalent to two single courses.

In other words, Greene & Gaynor furnished in an eight course mattress and got paid for it as eight mattresses, only a sufficient quantity of material to make six mattresses of the second design, while every outside bidder had to bid on the assumption of furnishing material for eight full second design mattresses. Thus the mere change in form to multiple mats gave Greene & Gaynor 25 per cent. advantage over outside bidders in omitted poles and fascines. Besides the Government paid them at Cumberland Sound on each eight course multiple mat 50 by 80 feet an excess for omitted material, for two full courses, of $488.88 per course, or $977.76.

Geo. Y. Wisner, for the defense, testifying on this point under cross-examination, said that the leaving out of the omitted grillages and cross-fascines would make the cost considerably less (Shields Vol. 3), p. 1736-1737:

> "But the engineer undoubtedly would specify that that material be replaced with kind: that is of some other material in place of it."

FAILURE TO INSPECT INTERNAL CONSTRUCTION OF MULTIPLE MATS.

Vol 23 P. 1091 8-19-2-21

Cooper testifies (Shields Vol. 1), pp. 520-521-522-523:

"In the mat camps as a rule there was no inspector. There have been some instances where inspectors were placed in charge of the mat camps and kept there for a month or possibly two months and then be taken away again, but there was no regular inspector at the mat camps. That is true for both contracts (1892 and 1896), except in the 1896 contract there was no inspector at all in the mat camps during Captain Carter's charge.

Q. Now when various multiple mattresses built up as you have described were brought to the place of sinking them on the jetty or at the training wall whichever it may be, did you have opportunities prior to that time to inspect the making up of these multiple mattresses?

A. I never saw the mats until they were brought to the river camps for placing in the work. They were brought there complete, ready for use and I had no opportunity of seeing them except from the outside.

Q. Take the multiple mats such as you have described, 50 feet wide, 100 feet long, 7 or 8 feet or more in height, how could you tell what was the interior construction of those mats?

A. It was impossible to tell exactly what the interior was composed of.

Q. Did you have any experience with any of these mats in regard to the manner of the interior construction as to its compactness or looseness?

A. In some instances I examined and had an opportunity of examining the inside of them. One case particularly, one of the inspectors called my attention to a hollow space in the mat, and when I examined it I found I could see daylight through the mat which was supposed to be 10 feet thick, a 7 course mat.

Q. Daylight in what direction?

A. That is towards the deck of the barge it was built on.

Commissioner: You looked through here down (showing the photograph)?

A. Yes, sir, in the center of the mat not on the edge.

Q. Right down through to the deck?

A. Right down through.

Q. Did you examine it?

A. I went down into the mat. In fact went down through the mat clear to the deck.

Q. What was the extent of the space in there?

A. Well, it was larger than this desk (indicating the Commissioner's desk).

Q. An open space in there as large as this desk?

A. Yes, sir.

Q. Right in the center?

A. Yes, sir.

Q. What size is this desk, give about the dimensions?

A. About six or seven feet cube probably.

Q. Did you report in connection with that?

A. Yes, sir; I reported that to Captain Carter verbally not in writing.

Q. What did he say about it?

A. He said that he would put an inspector at the camp if that class of work continued.

Q. Did he do it?

A. He did not.

Q. Was Captain Carter at the work frequently?

A. In the 1892 contract he was much more frequently at the work than he was in the 1896 contract. In the former contract probably he would average three or four times a week on the work. In the other not so often.

Q. Well, how often in the 1896 contract?

A. Well, once a week perhaps, possibly less.

Q. Did he have opportunities then to see what was going in?

A. Yes, sir.

Q. He saw the kind of mattresses that was going in?

A. Yes, sir.

Q. Did you call his attention to the construction of the mats or did he have it called to his attention in your presence or say anything about it?

A. It was he that called my attention to the mode of construction when I first took charge of the work in 1893, and told me he wanted the work constructed in that

manner, that is, in the manner I found it being constructed in 1893, and I carried on the work just as directed by him and just as I found it going on and whenever the work seemed to me to be deteriorating or slacking up I called his attention to it and also reported it to the contractor."

CARTER KEPT NO INSEPCTORS AT THE MATTRESS CAMPS.

Mr. A. S. Cooper, the assistant engineer, testifies that the only time inspectors were at the brush camps where the mats were constructed after 1893, was as follows: Mr. Ford was sent by Cooper to the camp for about one week in 1894, and Mr. Hall for about a week and Mr. Keating, another inspector, was sent to the camp by Carter for about two months in 1894, and these were the only times that inspectors were at the place where the multiple mats were being built during the whole period from 1893 to 1897 (testimony of Cooper, (Shields Vol. 2). p. 932).

Cooper testified, that in general when multiple mats were brought to the jetty for sinking in place, there was no opportunity to examine them except from the outside, that he could not tell what was the interior construction (Shields Vol. 1). pp. 520-521. He made a number of disallowances of material for faulty construction in the outside courses (see Exhibit 368, sheet 4). See also similar disallowances for faulty construction of *outside* courses made by Marion Twiggs, Assistant Engineer, at Cumberland Sound (Exhibit 369, sheets 1 and 3).

That Cooper should have accidentally discovered one mat built with grossly defective interior, which he reported to

Carter, was enough to show the necessity of keeping inspectors at the mattress camps.

No testimony that this or that person did not see holes in the mats will meet a case like this.

Marion Twiggs, Assistant Engineer under Carter for the 1896 contract at Cumberland Sound testified (Court Martial Vol. 1), p. 188:

"Q. Prior to the arrival of Captain Gillette, were any inspectors kept at the mattress camp?

A. No inspectors kept there at all.

Q. Did Captain Carter give any orders in regard to such inspectors?

A. He did not."

Paul J. Keating, witness for the prosecution, testified (Court Martial Vol. 2), p. 442: That Carter ordered him to report to Mr. Cooper for mat inspection June 17, 1894. That he was sent out to the mattress camps about 10 or 12 miles from Savannah (p. 442). That when he first got to the camps, a multiple mat had just been finished. That he found a large hole in it big enough for him to go down into the mat and through to the deck (p. 445 and 447). That Cooper gave him instructions as to how he wanted the multiple mats constructed. That he instructed the foremen (p. 446).

He made an estimate of the cost of the mattresses to the contractors and estimated it at 10 and 1/10 cents per square yard (p. 446). That he remained at the mattress camps only about six weeks.

*

DEFENSE.

Thos. F. Gaynor, foreman for the contractors and witness for the deefnse, testified, that half the work was done under the 1896 contract, for Cumberland Sound, at a brush camp at Fernandina, and the camp was then moved about 8 or 10 miles off to Point Peter. That while this camp was located near Fernandina, as above stated, the Engineer Officers,

P. 362. Note

*Compare the want of inspection of the fascines and details in all the Greene and Gaynor contracts with the close inspection given to the details even to the construction of each individual fascine under the Twiggs contract of July 5, 1893, at Augusta. Under that contract an inspector was kept at the wharf to inspect each fascine. If the fascine was six inches longer or shorter than specified, it was rejected. If a wire was loose the fascine had to be rebound. (Vol. 4, pp. 1659 and 1712.)

Assistant Engineer Marion Twiggs and Inspector Hall had their office about half a mile from the camp (Shields Vol. 3) p. 2574-5. That they were at the place where the mats were being built about twice a week at the first camp, and about twice a month for an hour or longer at the other place (Shields Vol. 3), p. 2575.

Cross-Examination.

He admitted having testified on the court martial (when Twiggs and Hall were living) that there were no inspectors kept at the camps where mattresses were made, and that it is true (Shields Vol. 3), p. 2602-3.

That it took about a day to build a mat (Shields Vol. 3), p. 2604. That what he meant was that in coming back to his office from his work on the jetties, Twiggs would usually walk through the brush (p. 2602-3) That it was only about 200 feet from where Twiggs would go along to the place where the mattresses were constructed (p. 2607). Frederick Crisp, for the defense, an assistant to Twiggs in his surveying work at the same harbor, who lived at the same office, while the camp was at the place near Fernandina, testified that he went with Twiggs a number of time to the jetties, but he, Crisp, never was at the brush camp or at the place where the mattresses were made. (Shields Vol. 3) p. 2608-2611.

CARTER ADMITS HE DID NOT KEEP INSPECTORS AT THE CAMPS WHERE MATTRESSES WERE BUILT.

Carter testified on the direct (Wyman Vol. 6), p. 369:

"Q. You have already testified with regard to inspecting fascines and mats, have you not, that when you came to build them in multiple, that the height of the mats alone was sufficient to determine whether there was enough brush in them and that an inspection again would have been of no account whatever?

A. No, sir; it would have been of no use to inspect them

other than at the work to determine whether the United States got what it paid for.

Q. The paying for these mattresses by the height determined exactly how much brush was in them?

A. Yes, sir; very much better than any other way."

On cross-examination (Wyman Vol. 9), p. 4405:

"Q. At page 148 of the Board of Inquiry, you testify that when the contractors became familiar with the character of the work and the mattresses were built on the barges, you took the inspectors off from the inspection of the construction of the mattresses?

A. That is true; we sent inspectors occasionally after that to the mattress or fascine camps, but did not keep them there regularly."

On his direct examination, Carter testified (Wyman Vol. 6), p. 375:

"Q. (By Mr. Stone): Major C. McD. Townsend of the United States Engineer Corps testified that the proper way to inspect that work was not at the brush camp, but where it was done, didn't he?

A. Yes, sir: he testified that m y method was right, and there would no necessity for an inspector at the brush camp."

They fail to cite where Townsend so testified, but assuming it so, he is very poor authority on that point. It was he who for two years allowed hollow walls built in the Washington Aqueduct, and never found it out. (*Ante*, p. 145.) The height of the aqueduct like the height of Carter's multiple mat, might be all that was required, but that did not prevent false interior construction.

That inspection of the multiple mats, at the place where they were being constructed on the barges, was necessary, is shown by the testimony hereinafter referred to setting forth how they were actually constructed.

HOW THE MULTIPLE MAT WAS ACTUALLY CONSTRUCTED UNDER THE 1896 CONTRACT AT CUMBERLAND SOUND.

Ernest B. Parker, an intelligent white carpenter, resident of Camden County, Georgia, who was employed by the Atlantic Contracting Company, in 1897, on the "Gin Barge" where mattresses were constructed for the Cumberland Sound contract of 1896, called by complainant testified (Hewlett Vol. 1), p. 88: , . , , , , , , , , , ,

Worked for Atlantic Contracting Company.

"Q. Did you do any work for the Atlantic Contracting Company commencing about February or March, 1897?

A. Yes, sir.

Q. Where were you working?

A. Point Peter.

Q. When you first commenced working with them what were you engaged at?

A. Repairing wagons and blocking lighters, or blocking what they called the gin on the barge, what the mattresses was built on; that is the first work I did for them.

Q. Carpenter work?

A. Yes, sir.

Distance of Wharf From Where Brush Was Cut.

Q. How far was the place from where the mattress was being built on the barge to where they were cutting brush?

A. Anywhere from three hundred yards to a mile and a half, I suppose.

Description of the Gin Barge.

Q. Explain what you mean by blocking the gin; can you explain how that arrangement was made; don't illus-

trate it with anything, but explain it so the Examiner can take it down?

A. They had a bulkhead built about the center, lengthwise from one end to the other; then on the outside, on one side they had small posts laid across all the way to lash the rack to when it was straight; then on that bulkhead—I don't know, I would not be positive about the distance apart—but skids were laid, there were long skids laid crosswise that bulkhead, forming a rack the width that the mat was to be built and the length. When the mat was under construction that rack was lashed to the outside posts on the outer edge of the lighter. After the mat was started on these skids the other edge that had no support was then blocked up, and the block stood on the outer edge of the lighter and coming up under each one of these long poles to keep them from tilting when the mat was put on it.

Mattresses Extended Over the Sides of The Gin Barge.

Q. The mat extended over the edge of the barge?

A. Yes, sir, on each side I should suppose; I never measured it, but to the best of my recollection it extended over from six to ten feet over the barge on each side.

Q. Well, to illustrate, say the right hand side of the barge, the frams on which the mat was resting was held down by being tied to posts on the side of the barge?

A. Yes, sir; there were posts nailed on to the barge and a strap across the top of these posts, and it was lashed to these at intervals along the rack.

Q. On the other side, we call the left hand side, the mattress bulged from the center and projected over it and over the side of the barge, and that had to be propped up to keep the mat from sinking on that side?

A. Yes, sir, it extended on both sides of the lighter for that matter.

Blocks Knocked Out When Mattress Launched.

Q. There was nothing to support it on this side but the blocks?

A. Yes.

Q. And these blocks were to be knocked out when the

mat got to the jetty and that caused the mattress to sink on that side and slide off?

A. Yes, sir.

Q. When the lashes were cut and the blockings knocked out the mats would slide off?

A. Yes, sir.

Witness Engaged in Blocking the Mattresses.

Q. You were engaged in doing that blocking?

A. Yes, sir, I blocked quite a number of them.

Q. Now in getting to the positions there under the mattress to put in those blocks—that was done after the mattress had been partially built?

A. It was started after the first course of poles and some time there would be one course of brush on; sometimes if the skids would tilt over you would have to go over the whole thing again.

Q. Now in getting at these blocks and putting them in—

A. They went right on building the mat.

Coming up Through Four Courses of Mattresses.

Q. In getting in there and putting in these blocks, how did you get out from under there?

A. Generally the most convenient way, sometimes in boats and sometimes through the mat, or what was constructed of the mat at that time.

Q. Would you come out from anywhere in the mat or through some particular place?

A. There was no particular place left to come out, but I generally came out towards the center; sometimes one place was open where you could go through easier than others.

Q. How many courses would there be sometimes through which you would come?

A. I don't know that I ever took any particular notice of that. We blocked these mats up with green pine poles; sawed them with hand saw, generally working in a hurry to get done with the job, and they were building mats generally in a hurry, and quite a number of times there were as many as four or five brush on the mat; almost generally one before I went down.

Q. Was there any difficulty in passing up through that mat anywhere in that stage of the proceeding?

A. No, no great difficulty; of course there might be a little brush in the way I would have to push out of the way; I generally had a hand saw, or hatchet or sometimes an ax, and I might cut a piece of brush out of the way. There was more trouble to get around the lighter with a boat and for that reason we generally left it ashore and went that way.

Mats Built Open at the Center.

Q. Did you hear any statement made or reason given for building an opening towards the center of the mat?

A. Yes, I have heard.

Mr. Stone: Q. Where did you hear it?

A. At the works. I would not be positive whether I heard Tom Gaynor or Jim Gaynor themselves say anything about it, but it was generally understood at the works.

Mr. Erwin: Q. What reason?

Mr. Stone: I object to what was understood at the works in a general way; let him state from whom he heard it or not at all.

A. I could not be positive.

Mr. Erwin: Q. Was there a marked difference between the construction of the interior from what it was on the outside, in regard to the looseness of the laying of the bundles, etc.?

A. Yes, sir.

Q. Covering the whole central portion?

A. Yes, sir; nearly all the central portion was built opener than the outside portion of the mat all the way round.

Philip Hopper, another intelligent white carpenter, resident of St. Mary's Georgia, who was also employed by the Atlantic Contracting Company, in 1897, on the "Gin Barge," where mattresses were constructed for the Cumberland Sound contract of 1896, called by complainant, testified as to the loose construction of the multiple mat on the gin barge as follows (Hewlett, Vol. 1), p. 86:

Engaged in Blocking up Matresses on Gin Barge.

"Q. You worked putting in blocks?
A. Yes, sir.
Q. To hold it up while the mat was being constructed?
A. Yes, sir. After starting and before there was much weight it was blocked up, and then the weight held it down, on the blocking.

Mattresses Extended Over Sides of Gin Barge.

Q. Did these mats go out to the side of the barge, so that it was difficult to get on this blocking?
A. Yes, sir; the mats were built over the edge of the barge, considerably over the edge.

Coming up Through Two, Three and Four Courses of Mattresses.

Q. Now, in getting at these blocks, putting in the blocks to hold up the gin poles, how did you frequently get at that block and out from under there, in doing the work?
A. Very often I took some boat and went underneath, and then again I crawled through the mat.
Q. When you did get on the mat and go through, about how many courses high would the mat be built up?
A. Two or three or four, something like that.
Q. And you crawled through it?
A. I got right through.
Q. Was any special hole made there for you to crawl through, or was it the condition of the mat?
A. I would go most anywhere through the mat, open the brush and crawl through."

(Hewlett Vol. 1) p. 86: Vol. 9 Page 35

Loose Construction of Interior of Mat.

"Q. Was there any difference in the construction of the outside portions of the multiple mattress—multiple

mattress means bundles of different courses—any difference in the outside from what it was in the interior?

A. I don't think it was built as solid inside as outside?

Q. Why?

A. I know they were particular about outside and not so particular about inside.

Q. Was it for the reason sand would settle in and sink them?

A. I don't know; I know you could go through it."

(Page 87): Vol 9 P4437

"Q. When you were there who was usually in charge of the construction of the mat?

A. Mr. Gaynor.

Q. Which one?

A. Tom Gaynor."

HOW THE FASCINES WERE CONSTRUCTED FOR THE 1896 CONTRACT AT CUMBERLAND SOUND.

Mr. Ernest B Parker, further testified (Hewlett Vol. 1), p. 91: Vol 9 P4440

Making Fascines for Atlantic Contracting Company, June and July, 1897.

"Q. (By Mr. Erwin.) Now, prior to the time Captain Gillette took charge, and when he sent Mr. Hall, Inspector, to the camp—I mean before that time—were you making bundles for the Atlantic Contracting Company, also?

A. Yes, sir.

Q. At Point Peter?

A. That was my home then; I left there at that time.

Length of Fascine.

Q. What was the length of the bundles that you made?

A. Supposed to be sixteen feet.

Describes Wooden Horse or Rack Used in Making the Bundles.

Q. How were the bundles made?

A. They were constructed on a wooden horse or rack; the rack itself was sixteen feet long, and it was made by taking a pole, and at intervals crossing two sticks on that pole, nailing them into the pole; the stands were at intervals, I suppose of two or three feet; some made them a little farther apart.

Material Used for Bundles, Pine Tops, Saw-Palmetto, Etc.

Q. You would make the bundles, how?

A. We would cut the bundles by taking a bush hack or ax and cutting down our brush and take anything that would go into the bundle to fill it up?

Q. About what?

A. Palmetto, or anything that would come along, generally pine saplings, oak saplings, ty-ty, or anything.

Q. Leaves and twigs?

A. All were put in, saw palmetto, generally cut the head off, and sometimes the whole thing.

Q. Pine tops?

A. Yes, sir; we generally tried to get oak saplings or pine to fill in what we called the backbone, and when all was filled in we had some loose strings, tar twine and tied it at intervals, I suppose three or four feet apart; we would put one string around and draw it down tight.

Seldom Used Chokers in Tying Bundles.

Q. Did you always use chokers for these strings?

A. No, sir; we seldom ever used chokers; it was more work and took more time and we were paid by the bundle, and, of course, it was our object to tie as many bundles as we could.

Q. How would you tie your strings?

A. Pull them with our hands; the strings were strong.

Diameter of Bundles, Eight or Ten Inches.

Q. What would be the average diameter, if you used a choker, or not?

A. I don't know, there were all sizes; some tied larger bundles than others; some tied bigger bundles today than tomorrow; I should think the average size to be something like eight or ten inches.

Q. They bulged out a little more between the ties?

A. Yes, sir; the bush was not put in solid and it was tied down by hand and, of course, the bundle was bigger outside than where tie was made.

Small Limbs Bent in and Tied in to Make a Good Show.

Mr. Stone: Q. How much bigger outside?

A. That would depend a little on the brush; there would be anywhere from two to four inches bigger; if we had oak saplings with limbs that could not be doubled in we would cut our brush; we would cut the limbs off with a bush hack so as to have them ready for the rack, we took anything with small limbs that we could pack in; we would put three or four saplings together; the limbs would make a good show.

Jim Gaynor Inspected the Bundles for Contractors.

Mr. Erwin: Q. The contractors had their own man to inspect the bundles?

A. Yes, sir; I suppose it was their own man; Jim Gaynor was the man who looked after that part of it.

Q. Did they inspect all bundles made by you?

A. I don't know; none were thrown off.

Contractors Paid Four Cents Apiece for Bundles.

Q. What did they pay for these bundles?

A. Four cents apiece.

Q. Four cents a bundle?

A. Yes, sir.

Chokers Used After Gillette Put Hall on to Inspect.

Q. You use any chokers at all?

A. Yes, we were told towards the latter part to use them.

Q. You worked up into August?

A. It was in the latter part of July or first of August, I don't remember; along towards the latter part of my work they were more particular about chokers; we had a choker on the rack, but did not use it very often. I was there until Mr. Hall came in July or August, I don't remember.

Q. When Mr. Hall came down did they change the character of the bundles made?

A. Yes, sir.

Mr. Stone: Q. When was he there?

A. July or August; I am not positive about it.

Mr. Erwin: Q. Did you continue to work then?

A. No, sir; I did not.

Q. Why did you go?

A. Because with the change in the work I did not think I could make as much money as I wanted to.

Vol. 9 p. 4432

Philip Hopper further testified (Hewlett Vol. 1), p. 82:

Making Fascines for Atlantic Contracting Company.

"Q. Did you have aything to do with the furnishing of brush used by the Atlantic Contracting Company, in 1897?

A. Only in this way; my father owns some land over there and they got the privilege to cut the brush.

Q. Did you work for them during that period yourself?

A. Yes, sir.

Q. Where was the brush cut?

A. At Point Peter.

Q. Was it gotten partly on your father's land and partly on the land of other people?

A. Yes, sir; most of it from Government Reservation.

Q. Most of it off the Government Reservation?

A. Yes, sir.

Carter Allowed Greene and Gaynor to Cut Brush Free of Charge on Government Reservation (*see ante, p.* 197).

A. A part off your father's land?
A. Yes, sir.
Q. Were you engaged in working for them in making bundles of brush?
A. Yes, sir, for about two weeks making bundles.

Price Four Cents a Bundle.

Q. What was paid you for the bundles of brush you made?
A. Four cents a bundle.

Length of Bundle, Twelve to Sixteen Feet.

Q. About what was the size of these bundles of brush you made?
A. Length?
Q. Yes, Length?
A. Supposed to be sixteen feet, averaged about sixteen feet in length.
Q. Sixteen feet and under?
A. Yes, sir.
Q. And ranging from what length about?
A. About twelve feet.
Q. Twelve to sixteen feet; something like that?
A. Yes, sir.

Got Brush Free.

Q. Did they have to pay anything for the brush material gotten from your father's place?
A. No, sir.
Mr. Stone: Of course all this is objected to as immaterial.

Wooden Horse or Rack Used.

Mr. Erwin: Q. How were these brush bundles made?
A. They were made in racks, with stocks driven across

and the brush laid in and tied up about three or two feet apart.

Q. There was a rack made, or wooden horse?
A. Wooden horse sixteen feet long.
Q. That was made by using cross sticks?
A. Yes, sir.
Q. At intervals?
A. Yes, sir.
Q. And laying the brush across?
A. Yes, sir.
Q. And what was done?
A. It was tied up with a string.
Q. At intervals of about two or three feet?
A. Yes, sir; as near as I remember.

Material Used, Pine Tops, Saw Palmetto, Etc.

Q. What kind of brush material was used in making these bundles; most anything that came along?
A. Mostly oak, palmetto leaves and anything that grows in the woods—myrtle.
Q. Pine tops?
A. Pine tops.
Q. Pine leaves, too?
A. Yes, sir.
Mr. Stone: Mr. Stone: Pines have leaves?
Mr. Erwin: Pine straw or leaves.

Bundles Tied up with String.

Q. Where were these bundles tied, those you made; what was the process of tying them?
A. They tied them with strings with a loop at the end.
Q. How far apart?
A. Two feet, with a loop at the end, long enough to go around the bundle, with a loop in the end and the end was put through and drawn down.

Chokers Seldom Used.

Q. What was it drawn with?
A. You would take hold the end and pull it down.

Q. With your hands?
A. Yes, sir.
Q. Did you use any stick chokers to choke them up?
A. At times; very often you used a choker, what kind of choker was used?
Q. When you used a choker, what kind of choker was used?
A. Two small sticks with a rope attached to both sticks, a small piece of rope tied nearly at the end, and a man was on each side of the horse pulling on the sticks and drew the rope tight around the bundle.

Bundles Six to Eight Inches in Diameter.

Q. Well, now, what was the average size of these bundles, in diameter, at the choker, where you tied the string?
A. Say from six to eight inches.
Q. Where tied?
A. Some tied them more and some less.
Q. Did they bulge out between the chokers?
A. Yes, when drawn down tight.
Q. Were you working right at the brush camp?
A. No, not at that time.
Q. I mean the time you were making bundles?
A. No, sir; half a mile, sometimes further.

How the Brush Was Laid in the Rack.

Q. Now, laying in the brush to make up that bundle, to tie it up, about how did you handle the brush; would you take little trees or saplings with limbs; how did you arrange them?
A. We would lay them in and if any brush stuck up we would take an ax and cut them off and lay them in straight so that they could lay close.
Q. You say you put in some palmetto, too?
A. Yes, sir.
Q. What kind?
A. Saw palmetto.
Q. That is, palmetto sticks up like a fan?
A. Yes, sir; that come up from the ground, and we would cut around the root and put the whole end in.

Q. Well, did you make any more money out of them without chokers compared with those you used chokers?
A. About the same thing.

Bundles Hauled in Wagons to Wharf.

Q. When you made up these bundles what became of them?
A. They were carried in wagons to where mats were being built and put on the mats.
Mr. Stone: I object to the witness stating anything he does not know of his own knowledge.
Q. Did you work anywhere the mats were being constructed on the barge?
A. Yes, sir; I worked on that about half a day; one day they were in a hurry and they put us on it.

Bundles Made from Quarter to One Mile from Wharf.

Q. How far was the place where you made up your brush from the water's edge where the mat was being constructed on the barge?
A. Close around a quarter of a mile, and the farthest a mile."

Frank DuBose, another intelligent white man, resident of Camden County, Georgia, witness for complaiant, who made and supplied poles and brush bundles to the Atlantic Contracting Company in 1897, under the 1896 contract at Cumberland Sound, testified (Hewlett Vol. 1), p. 95:

Brush Free.

"Q. Did you make any bundles of brush?
A. That is the work I did, was to make bundles.
Q. What place did you get the brush from?
A. I got it off my land.
Q. You charged them anything for the brush?
A. No, sir.

Q. Simply for making the bundles?
A. Yes, sir.

Size of Fascines.

Q. What length did the bundles range?
A. From 15 to 16 feet; I suppose, in length, and from 5 to 12 inches in diameter; something like that.

Bundles Made in a Rack.

Q. How were the brush bundles made?
A. In a rack, wooden rack, a saw horse arrangement with five crosses on it.
Q. The brush were laid in the rack?
A. Tied down with a string.

Material Used.

Q. What kind of material was used in making these bundles?
A. Anything from three and one-half inches down.
Q. What do you mean?
A. Bushes.
Q. Any bushes three and one-half inches down?
A. Anything larger we never put in the bundle.
Q. Three and one-half inches at the butt?
A. Yes, sir.
Q. Now, what did you use in making up the bundles, what kind of material generally?
A. Oak bushes, all kinds of bushes, pine trees, cedar, myrtle, oak trees.
Q. Palmettoes?
A. Yes, sir.
Q. Pine tops?
A. Yes, sir.
Q. Leaves and everything that could go in?
A. Yes, sir.
Q. Straw?
A. Yes, sir.

No Chokers Used in Tying Bundles.

Q. These bundles, what did you tie them with?
A. Tar strings.
Q. Twine?
A. Yes, sir; kinder twine rope; came in bundles about quarter of an inch in diameter; used strings about three feet long.
Q. What did you use to tie the bundles with, your hands or something else?
A. My hands.
Q. Did you use any chokers to tie them?
A. No, sir; I never used any chokers at all.

How the Bundles Were Tied.

Q. How did you tie them, explain it?
A. The string had a loop, and I passed the end through the loop; I tied, I think six strings to the bundle.
Q. Would the bundles bulge out in between the ties?
A. A little. More in some bundles than in others; according to how stiff the bundle was.

One Man Could Handle a Bundle.

Q. When one of these bundles were built, how many men did it take to handle it?
A. One could handle it; two generally handled it.
(Mr. Stone.) Q. How many did it take?
A. Very often I handled mine.

Weight of a Man Would Flatten a Bundle Six Inches.

(Mr. Erwin.) Q. After one of these bundles were built, do you know what would be the effect of a man standing on it as to compression?
A. No, sir; I suppose it would go down half a foot; maybe less; of course if built out of small brush they would go down considerably if pressure was put on them.

None of His Bundles Rejected.

Q. Any of your bundles rejected?
A. No, sir.
Q. All accepted?
A. Yes, sir."

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(Page 97):

Bundles Hauled to Wharf.

By Mr. Erwin:

"Q. When the bundles were hauled to where the mats were being built were they taken from off the wagon and put on the mat?
A. No, sir.
Q. What was done with them?
A. Unloaded on the ground.
Q. And then what was done with them?
A. Carried from there to the barge.
Q. Taken in the condition which they were hauled there and put right into the mat?
A. Yes, sir.
Q. How many men would take them in on the mat?
A. Two, I think. I know very little about the mats; I passed there several times and saw them building them."

One Man Averaged Forty Bundles a Day.

Vol 9 Page 4448
(Page 97):

"Q. About how many bundles, such as you made, were made by you a day?
A. Me and my partner made 112, that was most for one day; averaged about 75 or 80.
Q. For two?
A. Yes, sir, two people.
Q. Most you made yourself would be about 56 bundles?
A. Yes, sir; that is the best day's work we ever did.
Q. Average somewhere about 40 bundles?
A. Yes, sir."

(Page 95): Vol 9 Page 4445

Poles Furnished Eighteen to Twenty-five Feet in Length, Two Cents Apiece.

"Q. Did you furnish them any poles for construction of mats?
A. Yes, sir.
Q. What kind of poles?
A. Cypress and pines.
A. About what size?
A. I think, from 18 to 25 feet, 4 inches at the butt and 2 at the top; something like that.
Q. At what rate did you furnish them poles?
A. $20 per 1,000.
Q. $20 per 1,000?"
A. Yes. sir.

Relative Cost of Poles and of Brush Bundles.

It will be seen that $20 per 1,000 poles is at the rate of 2 cents per pole. Now, the brush bundles 16 feet long were paid for at 4 cents per bundle. And the fascines were laid in the mats end to end or only slightly lapped. The poles, however, had, according to the specifications, to have long laps where tied together, so as to reach across the mats.

We have here, therefore, a fair means of estimating the relative cost to the contractor of poles, and of brush bundles or so-called fascines. That is to say, a pole of a given length cost the contractor about half as much as a brush bundle made the same length.

James H. Gaynor and Thomas F. Gaynor, Inspectors for Contractors.

(Page 98):

"Q. Who was the man looking after inspecting your bundles?
A. Mr. Gaynor, Jim Gaynor; he was in the woods at that time. When the mats were being constructed he would be about constructing the mat on the barge.

Mr. Tom Gaynor, I would see him around the mats whenever I would go over there; he did not stay around the mat; he stayed on the bluff, he could see all that was going on."
(Page 95): Vol 9 P444-45

Quit Making Bundles when Captain Gillette Put On Inspector.

"Q. Do you know about what month it was (you were at work there)?
A. I think it was in latter part of July (1897. I am not positive.
Q. Was it before Mr. Hall went over there to inspect the construction of mats?
A. Yes, sir.
Q. Mr. Hall, the Government Inspector?
A. Yes, sir; I worked about four or five days after he came there.
Q. And then you quit?
A. Yes, cir."

O. G. Darling, of Camden Co., Georgia, was a land owner from whom the contractors bought brush for making fascines in 1897. He testified (Hewlett Vol. 1), p. 98: Vol 9 P444-48

Brush in Eight Course Multiple Mat Cost $5.

"Q. You own a place over there at Point Peter?
A. Yes, sir.
Q. Did the Gaynors get any brush off your place?
A. Yes, sir.
Q. What did they pay you for that brush?
A. $5 per mat; what brush would make a mattress they paid $5 for.
Q. These mattresses made on the barges you mean?
A. Yes, sir.
Q. You mean one course mat, or more?
A. The whole mattress when it was ready for launching.
Q. Whatever number of courses it took did not make any difference?
A. We were not confined to any number of courses at all; it was the completed mattress."

It has already been seen (*ante*, p. 358) that Carter paid Greene & Gaynor from $3,911 to $4,884 for an eight course multiple mat. So that the cost $5 for the brush in such a mat was insignificant.

Most of their brush used at Cumberland Sound was, however, obtained from Government Reservation. (Testimony of Hopper, *ante*, p. 373) which Carter allowed them to have free of charge. (*Ante*, p. 197.)

O. G. Darling further testified as to the method the contractors' inspectors had in paying for brush bundles taken from his land (Hewlett Vol. 1), p. 98:

Making Bundles.

"Q. Do you know what system they used in regard to bundles they accepted; did they mark them?

A. Yes. I know about that; there was an Inspector that would have all the bundles accepted by them laid side by side, and then there was a man with a whitewash brush and a bucket of whitewash, who would strike across the entire lot, then they were ready for the teamsters to pick up.

Q. The Atlantic Contracting Company then had a man there to inspect what they wanted.

A. Yes, sir; a man known as a woodsman.

Q. And he would mark with a whitewash brush the bundles accepted?

A. Yes, sir.

The Weight of These Bundles Six Months Later.

Q. After Captain Gillette came in and Mr. Hall, Government Inspector, and Mr. Gieseler, went down there, did you go with them to the brush camp?

A. Yes, sir.

Q. At Point Peter?

A. Yes, sir.

Q. The work had stopped then, had it not?

A. Yes, sir; quite a long time.

Q. Were there not a lot of this brush accepted, with the whitewash on them, still there?

A. Yes, sir; the teamsters were careless about gathering them up; for instance. if a square was clear in the land the teamsters would drive around and would most every time leave some in the corners of the tract that was cleared; there was no trouble to find them with whitewash marks in those places; you could not find them wherever it was convenient for the teamsters to get them.

Q. Did you see Mr. Gieseler examine any of these bundles with whitewash marks on them?

A. Yes, sir.

Mr. Stone: I object to anything which took place after Captain Carter left, if it is to be used against him.

Mr. Erwin: What did you see him do in regard to any of these bundles?

A. Kick them with his foot.

Q. See him test the weight of any of them?

A. Yes, sir; I saw him pick one up by the middle string with one finger.

Q. Which finger?

A. Forefinger of right hand.

Q. Lift the entire bundle?

A. Yes, sir.

Q. What was the length of the bundle as near as you can give?

A. Sixteen feet; somewhere between fifteen and sixteen.

Q. Was the material in that bundle in exactly the same condition in regard to greeness as it was when made?

A. No, sir; it had shed the leaves, and no doubt was very much lighter than when made.

Q. This was in the condition of about the rest of them?

A. Yes, sir; it had not been long enough to become decayed and a few branches maybe were lost, but the leaves were gone.

Q. Did you notice what kind of material was used in these bundles?

Material Used in the Bundles.

A. They were made of all the material that grew on a given piece of ground, so when they got through there was nothing left; everything was cleared off; you could drive anywhere over the land.

Q. Mention some of the material used in the bundles.

A. Scrub oak, some were palmetto, and ty-ty—it is a crooked limb which resembles wire.

Q. Pine tops?

A. Some.

THE CUMBERLAND SOUND MULTIPLE MATTRESS WHICH CAPTAIN GILLETTE SAW.

DISCOVERY OF THE FRAUD.

Captain Cassius E. Gillette, who succeeded Captain Carter, arrived in Savannah on July 20, 1897, called for complainant, testified (Shields Vol. 1) p. 472:

Inspection of Cumberland Sound Work.

"Q. Just state how the matter came up and what you saw?

A. I went to Cumberland Sound for the purpose of inspecting the work.

Q. When was it?

A. I don't remember the exact date; it was about the first of August, 1897; I think a day or two before that date.

Q. About ten days after you arrived in the District?

A. Eight or ten days. Before going, I read the specifications. I did not, however, take a copy with me. I reached Fernandina. After waiting about a day a mattress was brought out by the contractors on a lighter and I inspected it. I made an inspection and I found an arrangement which the contractors called a mattress.

Q. First tell us what you saw of it, etc. Don't commence and describe the mattress until you tell us where the mattress was, etc.

Mattress Brought in on Barge.

A. I went there and made an inspection, and after a time, about a day, the contractors brought out a brush construction on a lighter or barge; a decked barge.

Describes Gin Barge.

It was placed on a superstructure which had been built on the deck of the barge.

The Frame on Which Mattress Was Built.

This superstructure consisted of a parallel set of hewn timbers spaced three or four feet apart cross-wise of the barge. They were horizontal in position and about 4 or 5 feet above the deck, so arranged and supported that they could be tipped to an inclined position so that anything placed upon them would slide off with a little assistance.

The Eight Course Multiple Mat.

On top of that, was a rectangular—was a pile of brush. rectangular shape, about 8 feet high, the sides being square, the ends also being square,

Two Steps.

but in two sections, two steps about 4 feet deep. That is the rise of each step was about 4 feet and what you might call the tread of the step was about 10 feet.

On Casual Inspection Looked a Mass of Brush.

The structure at a casual inspection appeared to be just a mass of irregularly placed brush; you could not see much system about it. I did not notice any rope or wire or strings fastening the brush into bundles at first, but I believe on careful examination a semblance of bundles I discovered.

The Poles.

Sticking out from the sides of the mattress were small pin poles some of them as large as 4 inches, I should think at the butts; some of them as small as one and one-half inches at the small ends.

On top of the brush could be distinguished a grillage of these poles placed about 8 feet apart.

Poles Not Scarfed.

Separate poles where they were spliced, were simply spliced by lapping and wiring.

Grillage at Steps.

There were evidences of a similar grillage on top of each of the lower steps, I spoke of, at the ends of the mattress or brush construction.

Brush Very Loose.

The brush was very loose; it stuck out in such an irregular manner from ends, sides and top of the mattress as to almost conceal any systematic construction.

Could Not Walk Across It Without Sinking in.

In attempting to walk across it, I found it was impracticable, or very difficult except by walking a pole. At nearly every step I would go in the full length of my legs.

Could Shove Pole Through Anywhere.

To determine the thickness of the structure, the Assistant Engineer and the Inspector, under my personal and imediate supervision, took a sounding pole, a round pole about one and one-quarter or 2 inches in diameter. The Assistant Engineer went on top of the mattress and at various places shoved this pole bodily through the structure. The Inspector underneath called out when the end of the pole was even with the bottom of the mattress. The thickness of the mattress was then read off by the Assistant Engineer by the reading on the pole, just as if he were making a sounding in water.

The Assistant Engineer's name was Marion Twiggs. The Inspector was John M. Hall.

In selecting the point at which this pole was pushed through the mattress, the upper surface was conceived as being divided or was actually divided by the poles, and

imaginary lines between them, and at the angles of these squares, the pole was thrust through. It was not necessary to hunt around to find a place where the pole would go through. It could be put through with very little trouble at any point, and only once or twice did Mr. Twiggs have to change the location where he first started. The pole on those occasions struck something which would not let it go through.

Photographed the Mattress.

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(Page 475):

I then had the mattress photographed by Mr. Hall. Exhibit No. 4 Court Martial) (Shields Exhibit 195) is the photograph that was taken of the mattress as it lay in the Bay.

Exhibit No. 5 (Court Martial) (Shields Exhibit 194) is the photograph also taken by Mr. Hall of the mattress as it was tipped and ready to slide into the water, when it was placed in the work.

Exhibit No. 5, the photograph is where the small parts appear to be magnified. That was due to the movement of the mattress, and movement of the camera, as both were on the barges out on the bar."

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Page 475:

"The thickness of the mattress as determined by the sounding pole averaged 7-9/10 feet as I remember it."

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A reference to Exhibit 369 (Shields) compilation of tri-monthly reports of the Assistant Engineer, it will be seen that this was mattress No. 27 reported under date of July 29, 1897, as an eight course mattress 7.9 feet in height.

Captain Gillette further testified (Shields Vol. 1), p. 476: Vol 23 P 10874

Mattress Divided into Eight Layers.

"After carefully inspecting the mattress, a fact which would not have occurred to me except had my attention been attracted to it, I found that the mattress was divided by the horizontal poles, which could be discovered

sticking out of the sides and ends, into eight layers, which I computed at the time, under the system of payments, per square yard, that being designated as an eight course mat, that the structure would cost the Government at contract prices, something over $3600."

Page 482:

The Fascines.

"Q. Well, now, describe what was there that in a way conformed to a fascine?

A. A layer of very loose brush which was possibly loosely bound into bundles and tied with lath yarn. I remember seeing a few ties of lath yarn which you had to hunt to find. While I only found a few of them, I believe all the brush was so bundled.

Bundles Had Lost Their Identity.

Q. Well, what made the brush bundle lose its identity there, Captain?

A. It was so loose that it spread out, and it does not correspond to the specifications in that they were not closely compacted fascines. They could be described as loosely tied or loosely compacted bundles."

After describing the manner in which the poles were put in between the courses (pp. 482 to 484), with a full grillage at the top and at the botom of the multiple mat, and on the "step," and only a half grillage between the intermediate courses, Captain Gillete testified (Shields Vol. 1), p. 484:

Two-Thirds of Poles Specified Omitted.

"Then, by putting in the eight courses of mattresses at one time, if the Government was paying for each of these courses as a complete mattress, was it getting the full amount of poles specified in this third design?

A. It was not; it was only getting a fraction over

one-third the proper amount; in this particular case, less than one-third; a fraction less than one-third."

Page 491:

Fascines Had Not More Than Two-Fifths of Required Material.

"There was not more than two-fifths of the amount of brush within any band to constitute proper tight compression of the fascines."

Brush Not Trimmed.

"Now, in regard to the brush, was the brush straight and well trimmed?

A. The brush was not straight; it was not trimmed at all. The brush may have been as straight as could reasonably be obtained in that vicinity.

Q. What do you mean by "not trimmed?"

A. The brush of which the mattress was made consisted of small saplings, branches of trees, put in exactly as they were cut, no limbs trimmed off; no indications of anything of the kind. I did not see a single original stem, either the small sapling or the limb having any cuts left from which other brush had been removed. Of course there may have been some but I did not see any."

Page 490:

Length of Fascines.

"A. I did not make any measurement of fascines or bundles, but I saw none as long as 30 feet or any indication of any as long as 30 feet."

Page 493:

How Shortening Length of Fascines Decreases Cost to Contractor.

"A. There is a very great deal of difference between building a mattress with long fascines, 30 to 100 feet long, and building a mattress with short ones, from 15 to 20 feet long. The difference is this: The mattress must be built in either case near the shore, either on ways

on the shore or ways on a lighter moored to the shore.

To get that material out of the woods where it is cut —and it of course cannot be all cut in the immediate vicinity of the building place—it has to be hauled; cannot carry in by hand; it is too far; they build a few mattresses at one place and brush may have to be hauled two miles or two and a half miles. It is necessary to haul it in wagons. To haul loose brush in wagons a contractor would be in a precisely similar position as a farmer is who wants to ship his hay to the market. It is too bulky; the transportation costs too much. He bales the hay. The contractor for the same reason puts his brush into bundles.

If he builds his fascines 30 to 100 feet long in the brush camps, he cannot haul them on the wagon; there is no practical way that he can haul them. He must therefore put it up into bundles from 12 to 20 feet long, compress it considerably so that he can get a reasonable amount on one wagon load. Now, if he is building these mattresses of the short bundles 12, 15 or 20 feet long, he uses those bundles that he makes in the woods to make his mattress; but if he must build them 30 to 100 feet long, particularly if they have to be thoroughly made, he must cut all these bundles open, use the brush as if he had freshly obtained it, and make those fascines all over again carefully."

Vol 22 P 10382

The specifications for this contract (see Printed Volume of Contracts p. 516), required that all fascines should be from 30 to 100 feet in length.

Colonel Bixby, expert witness for the defense, testified that in his opinion a mattress constructed of fascines less than 30 feet would not conform to the specifications (Wyman

Vol 6 P 4248.) Vol. 18 8657

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Page 501:

More Brush on Top of Design No. 1 Log Mattress, Than in a Layer of Carter's Multiple Mat.

"A. There is enormously more material in the log mattress design No. 1 than there was in any layer of that first mattress I inspected.

In the specified design, first design, there is more brush and as many poles, so that leaving out the logs the brush and poles, and the binders on top of design No. 1 as specified, contains more material than one layer of the eight course mattress I inspected; leaving out the logs entirely."

Vol. 23 p. 10903
Page 505:

Log Mattress Had to Be Sent Singly.

"Q. Couldn't you pile up eight courses of the log mattresses of the first design in the same way as this brush mattress and dump them at once?

A. No, sir; you could not dump them off a lighter. You have to float a log mattress and tow it out as a raft, and while you might handle two, it would be very cumbersome and awkward. I don't think it has ever been done.

Q. Then Captain, a bidder—if you were a proposed bidder under these specifications and you did not know which of these mattresses the engineer would select, you would have to bid on a log mattress with brush on it and the idea that each one had to be put in singly?

A. Yes, certainly."

Vol. 23 p. 10902
Page 504:

Saving of Cost to Contractors by Multiple Form Enormous.

"If you make these little brush mattresses with less brush than there was on top of the logs, and pile them up on your lighter and dump them, six or eight at a time, into the sea, making one trip with your stone lighters and tow, the saving over going six or eight trips with a heavy log mattress is something enormous in proportion to the total cost."

Vol. 23 p. 10883
Page 485:

Discoveries at Cumberland Brought on Investigation.

"Q. Did your discovery in regard to that lead to the investigation which was afterwards made?

A. Yes, sir."

TESTIMONY OF MARION TWIGGS, ASSISTANT ENGINEER ON CUMBERLAND SOUND CONTRACT OF 1896, No. 6517.

At the time of the Court Martial trial, Marion Twiggs, Carter's Assistant Engineer on the Cumberland Sound Contract of 1896, was too ill to come to court. (Court Martial Record Vol. 1) p. 182. His testimony was taken at his home in Augusta, Georgia. He died shortly afterward. He testified (Court Martial Vol. 1), p. 183: That he was present at the inspection by Captain Gillette of the mattress at Cumberland Sound soon after he relieved Captain Carter.

He identified the two photographs (Exhibits 4 and 5 Court Martial) taken of the mattress.

Mattress Inspected by Gillette Was Average of Those Put in During the Work.

Court Martial (Vol. 1) p. 184:

"Q. How did the mattress compare in construction and quality to those previously sunk in the work during the present contract?

A. It was about an average mattress.

Q. Did it essentially vary in any particular?

A. Not that I noticed."

(Court Martial Vol. 1) p. 201:

"Q. Can you state the date when the contractors first commenced work on this contract?

A. About the last part of November, 1896.

Q. Did you inspect all the mattresses placed in the jetty?

A. Not all of them.

Q. What proportion?

A. I inspected half of them.

Q. How many were placed in the jetty?

A. I don't remember the number now?

Q. Relatively, as near as you can recall.

A. Over one hundred.

Q. Were they all constructed after the manner of the one which Captain Gillette and yourself inspected, the one you have testified to?

A. That was an average mattress; some of them were better than that, and some of them a little worse than that.

Q. Was their general character the same?

A. The general character was the same."

Vol. 3 P. 1160

Page 196):

Gillette Inspected Two Multiple Mats Put in at Cumberland.

"Q. Can you recall, Mr. Twiggs, how many mattresses were inspected by Captain Gillette before work stopped?

A. I know of two that he saw at Cumberland Sound—three of them, I think, he saw there—single course mats. Captain Gillette, I think, saw two mattresses of the old design, and he saw two or three matresses built according to the specifications if I remember correctly.

Q. I am referring to the two mattresses furnished by the contractors, the first and the second one?

A. The two mattresses furnished by the contractors?

Q. Yes, the first one furnished and the next one furnished—how did they compare?

A. The second mattress was better constructed than the first one that Captain Gillette saw.

Q. Was it constructed on the same general principles?

A. It was constructed on the same general principles, but I think there was a good deal more material in that mattress than in the first mattress Captain Gillette saw.

Q. A greater number of bundles?

A. Yes, sir.

Q. Pressed closer together?

A. Pressed closer together."

Vol. 3 P. 1154

Page 189:

FASCINES NOT ACCORDING TO SPECIFICATIONS.

"Q. In regard to the mattress, the two mattresses, which were submitted you examined the fascines, or so-called fascines used in their construction; were they, of

themselves, in compliance with the specifications of the third design?

A. The fascines used?

Q. Yes?

A. No; they were not.

Q. In what did they differ?

A. They were about 15 feet long, and bound at irregular intervals, and not choked.

Q. Were they trimmed?

A. They were not trimmed.

Q. Not at all?

A. I noticed sometimes there would be a big rough place in there that interfered, and you could not mash it in there,—at times they would cut those large pieces off, but generally they were not trimmed at all."

Vol 3 8159
Page 196:

How Fascines Were Constructed.

"Q. You have testified as to those bundles of which these mattresses were constructed; were they properly filled with brush?

A. How is that?

Q. The bundles, or so-called fascines, were they properly filled with brush?

A. No, sir; I don't think they were; they were very loose.

Q. They were not drawn together?

A. They were not drawn together,—not choked."

Vol 3 8162
Page 200:

Carter Inspected These Bundles and Passed Them.

"(By the Court.) Q. I should like to ask the witness if, at any time between the inception of the contract and the time when Captain Carter was relieved from duty, he made any report to him of these various defects or defaults in the contract?

A. Captain Carter inspected these bundles of brush. I saw him when he inspected them, and consequently it was unnecessary for me to make a report, as he made no remarks upon these bundles of brush."

Vol 3 P. 166
(Page 205):

Less Than One Foot of Stone Placed on Multiple Mat.

"Q. (By the Court.) What was the average thickness of the ballast that was placed on the mats?

A. Less than a foot probably, or a foot of stone."

Vol 3 P. 166
(Page 205):

"Q. (By the Court.) Were they (the mattresses) delivered into the jetty on a scow or towed into place?

A. They were put on top of a barge and dumped off; they were on a barge, and they were dumped off into place. Stone barges were anchored on either side of the mattress, and everything made fast, and then the mattress was sunk from using the stone from both barges at the same time."

Vol 3 P. 163
(Page 202):

Carter Directed the Building of the Multiple Mats.

"A. That was the instructions, to tie the different courses together , which were called eight course multiple mats, which we sunk.

Q. (By the Court.) You received instructions to receive mattresses of that kind?

A. Yes, sir.

Q. (By the Court.) From whom?

A. From Captain Carter. They started at six courses and went up to eight courses.

Put on as Little Stone as Possible.

Q. (By the Court.) How was it intended that those mattresses should be weighted—what instructions did you receive upon that point from Capt. Carter?

A. To place a sufficient amount of stone upon each mattress to make it secure in case of storms, and to use as little stone as possible.

Q. (By the Court.) That, then, was a matter resting entirely in your discretion was it,—the amount of stone which you placed upon the mattresses?

A. The amount of stone. After the mattress work was

finished, it was intended to go over all the mattresses then, and the stone work would be continued."

Jetty Built Sixteen Courses High of Mattresses.

1-31 Exhibit 369 (Shields) Sheet 4. Compilation of the tri-monthly reports of work at Cumberland Sound and the reports themselves, show that Carter had laid a foundation course of multiple mats 6 to 8 courses deep and from 8 to 9 feet in height the entire length of the jetties and with only the then 1 foot layer of stone on it, and then on July 16, 1897, before he had left the district, they had commenced laying on top of these another course of multiple mats eight courses deep, with another thin layer of stone on them, making in all 16 courses of mat depth.

Carter admitted this before the Board of Officers (*ante*, p. 283). Vol 3 P 1167
Page 207:

Carter Saw Such Defective Multiple Mats Put In Work.

"Q. (By the Court.) How many of these mattresses did Capt. Carter see put in the jetty—those which you considered defective?

A. I don't remember that. I remember that Capt. Carter inspected five mattresses that I know of; he saw them.

Q. (By the Court.) On Cumberland Sound?

A. On Cumberland Soundi.

Q. (By the Court.) Were they all at one time, or at different inspections?

A. Different inspections.

Q. (By the Court.) How many different inspections?

A. I don't remember; it was three different inspections anyway.

Q. (By the Court.) At what intervals of time were those three inspections made?

A. I don't remember that.

Q. Can you give about the date of any one inspection?

A. Yes, it was about July.

Q. What year?
A. July 1897.

Q. (By the Court.) Those five mattresses which Capt. Carter saw, how did they compare in quality with the first one Capt. Gillette inspected after he took charge of the work?

A. One mattress I remember especially, Capt. Carter went out with the tow to see; he stood right by the mattress and I was on the stone barge with him, and the contractors had everything hooked up and sank this mattress, and he saw it very well I think—on top and all sides, and that mattress was a little worse, I think, than the mattress Capt. Gillette saw, because I inspected that myself very carefully. I also inspected the mattress that Capt. Gillette inspected.

Q. (By the Court.) Now, from your answer to my question, tell me about what proportion of brush that mattress he saw, contained relatively to the amount it should have contained to make a mattress like that called for in the specifications.

A. The proportion would be about four-ninths; one-third to four-ninths, somewhere along there."

(Page 189):

Carter's Close Relationship with Greene and the Fate of Curtis had its Effect.

Marion Twiggs, further testified to a conversation had between Carter and himself after Carter was being investigated. (Court Martial Vol. 1), p. 189:

"And then he asked me about the general construction of the work, and did I feel free to come into his office and speak to him at any time about the work, and I told him I did not feel free to come into his office. He asked me why, and I told him I believed he was very friendly with Capt. Greene."

(Page 204):

Mattresses Paid For by Square Yard of Each Course.

"Q. (By the Court.) How many courses did the mattresses contain that were being placed in the jetty when Capt Gillette took charge?

A. Eight courses.

Q. (By the Court) Were those mattresses paid for per square yard for each course?

A. They were.

Q. (By the Court.) That is, if there was a mattress containing eight courses, the mattress in place would contain eight square yards for every square yard in each course, to be paid for; is that correct?

A. Yes, sir."

Vol. 3 Fol. 59

(Page 196):

Estimated the Cost to the Contractors Ten Cents a Square Yard.

"Q. What is your estimate of the cost of the mattress, as built, per square yard,—this mattress in regard to which you have testified?

A. My estimate is about ten cents.

Q. That was simply the construction of the mattress on the barge?

A. That included everything, I think, sinking too.

Q. Sinking and all?

A. Sinking and all."

THE COST TO THE CONTRACTOR OF A COURSE IN A MULTIPLE MAT AS BUILT IN SAVANNAH DISTRICT.

GIESLER'S ESTIMATE 11 2-5 CENTS PER SQ. YARD.

Ernst A. Geisler, civil engineer, and the man who according to Carter's reports to the Chief of Engineers, did most of the surveys and scientific calculations for projects of improvement in the Savannah District, and who was placed in charge of Cumberland Sound work by Captain Gillette following the illness of Marion Twiggs, made a careful estimate of the cost of the multiple mat from data obtained on the ground.

His estimate was as follows (Court Martial Record Vol. 2), p. 403: Vol 3 P 1325

Privilege of cutting brush per multiple mat	$ 5.00
Cutting and hauling 2000 bundles at 9 cents	180.00
Cutting and hauling 522 grillage poles at 6c	31.32
9,000 linear feet of wire 600 pounds at 2c	12.00
Building mat, 2 foremen 1 day at $3	6.00
Building mat, 50 laborers 1 day at $1	50.000
Hire of Tug Boat 1-1/2 days sinking the mat	37.50
Interest, amortization and repairs on a $9,000 plant, in this case distributed among 150 mats assuming that 150 of those can be built in a year	15.00
Consumption of rope	8.00
Estimated loss of mats and contingencies, 10 per cent.	34.48
Total estimated cost eight course mat	$379.30

1 course 75 x 50 feet.....3750 sq. feet.
8

Eight courses equal.....30,000 sq. feet equals
Eight courses equal.....3,333.33 sq. yards.

Cost to the contractor, 3,333.33 square yards, $379.30 or 11 2 5 cents per square yard.

Cost to Government at contract price $1.10 per square yard $3,666.66.

Cost of Second Design Put In Singly.

Mr. Geisler estimates (Court Martial Record Vol. 2), p. 402 that the second design Carter mattress put in singly would cost in Savannah District 56-4/5 cents per square yard. Vol 3 P 1324

Cost of Third Design Put In Singly.

Mr. Geisler estimates that the third design mat put in singly would be 43-1/5 cents per square yard. Vol 3 P 1325

COOPERS' ESTIMATE 9 CENTS PER SQUARE YARD.

Arthur S. Cooper, Assistant Engineer under Carter at Savannah Harbor, made a detail estimate of the cost of the multiple mat to the contractor for the Savannah Harbor contracts (Court Martial Vol. 2), p. 218, and reached the conclusion that it costs 9 cents per square yard in place.

KEATING'S ESTIMATE 10 1-10 CENTS PER SQUARE YARD.

Paul J. Keating, Inspector of Mattresses under Carter at Savannah Harbor in 1894, estimated (Court Martial Vol. 2), p. 446, the cost of the multiple mat in place at 10-1/10 cents per square yard.

MARION TWIGGS ESTIMATE 10 CENTS PER SQUARE YARD.

Marion Twiggs, Assistant Engineer under Carter, estimated the cost of the multiple mat at Cumberland Sound at 10 cents per square yard. (*Ante*, p. 400.)

CARTER MADE THE HEIGHT OF THE MULTIPLE MAT AND NOT ITS INTERNAL CONSTRUCTION, THE TEST OF ITS ACCEPTANCE.

Arthur S. Cooper, Assistant Engineer on the Savannah Harbor contracts of 1892 and 1896 testified (Court Martial Vol. 2), p. 216:

"Q. Had you any instructions as to what character of mattresses you should accept?

A. When I returned to the service in 1893, I was taken down on the works and shown what was going on, shown the style of construction, when I returned to the service in 1893 I was sent down the river and shown the style of mattresses at that time being constructed in the harbor.

This style of construction was given me as satisfactory to Captain Carter, and I was told that I was to carry on the work in the manner that I found it being carried on; in other words, to carry it to that standard, that style of construction, that style of construction that I found being used, was the standard I was to employ during my work."

Vol 3 P 1175
Page 217:

"Q. Were any instructions given you in any degree varying from those original instructions, at any subsequent time?

A. Yes; to a certain extent varying the height required for each course.

Q. Please state what those instructions were.

A. I was given by Capt. Carter a list of the heights that would be required when multiple mats were put in; that is mats made one on top of the other being as high as ten courses at a time. I was given a list that each of these mattresses would have to have, in order to be entitled to the number of courses mentioned in that list, and that list was my guide for the entire construction of the entire work of the contract."

Vol 3 P 1175
Page 217:

"A. Capt. Carter gave me a pencil memoranda: I carried that in my field book until it was worn out. It was about to fall to pieces, and then I made a copy of it in one of my field books, but the original I have not got.

Q. You have not got the original?

A. No, sir.

Q. What have you done with it?

A. It was worn out, falling to pieces, and I threw it away.

Q. You threw the remnants away?

A. Yes, sir.

Q. You are sure it was destroyed?

A. Yes, sir.

Q. Have you a copy with you?

A. Yes, sir; I have a copy with me. It was copied in the back of one of the field books, used in the construction of the Cockspur Island train wall or in the front, however."

Vol 3 P 1176
Page 218:

"Q. Please read and explain those instructions?

Cooper then gives the following table:

Table of Multiple Mat Heights.

1 Course 2 feet in height.
2 Courses 3-1/2 feet in height.
4 courses 5 feet in height.
5 Course 7-1/ feet in height.
6 Courses 9 feet in height.
7 Courses 10 feet in height.
8 Courses 12 feet in height.

These heights included the height of the grillage poles as well as of the brush material between them. Cooper's statement before Board (Board Record Vol. 1), p. 27. Conant's testimony (Court Martial Vol. 4), p. 781. (Cooper Court Martial Vol. 2), p. 319.

To the same point, see Cooper's testimony (Shields Vol. 2), p. 922 and 525.

Carter Reduces the Table Heights to 1-1/2 feet per Course.

(Shields Vol. 1) p. 525:

"He (Carter) afterwards reduced the figures somewhat so that the average was some little less than 1-1/2 to a course. And then told me that if the mats came up to any one of those figures there to allow them those courses, no matter whether the courses were there or not; If they came to that height, to allow them that number of courses, and that I declined to do.

Instructed Cooper to Report Mattresses in Excess of Courses.

Cooper stated before the Board (Board Record Vol.1) p. 27:

"Q. Were you ever instructed by Capt. Carter to allow a certain number of courses, or a certain number of mattresses, for a given height, irrespective of the division into courses?

A. Yes, sir.

Q. Did you do it?
A. No, sir.
Q. Why not?
A. Capt. Carter asked me when he was giving me this memorandum to allow them for a certain number of courses for a certain height, no matter how they got the height and I told Capt. Carter I could not do it because I would be certifying to something that was not so, and the mattress must have those courses.
Q. (By Major Adams.) When was that?
A. I think it was in 1894 or 1895; I am not certain."

CARTER ADMITS RELYING ON MEASUREMENT OF HEIGHTS AND NOT ON INSPECTION.

Carter admitted that he had taken off all inspectors from the inspection of mattresses where they were being built and relied upon the measurement of heights of mattresses (*ante*, p. 363).

GRILLAGE POLES ADDED GREATLY TO THE HEIGHT OF THE MULTIPLE MATS AS MEASURED.

By referring to Complainant's Exhibit 368 (Shields) Vol. 31 compilation of the tri-monthly reports of mattresses put in under the 1896 contract at Savannah Harbor, and to Complainant's Exhibit 369 (Shields) compilation of similar reports of mattresses put in under the 1896 contract at Cumberland Sound, and to Defendant's Exhibit 150 (Wyman) Vol. 29 compilation of similar reports of mattresses put in under the 1892 contract at Savannah Harbor, it will be seen that after the introduction of the use of the multiple mat 1893, Carter required the Assistant Engineers to enter upon their tri-monthly reports the height of every multiple mat put in and the number of courses in each mat. The record of multiple mat heights appears to have commenced on September 21, 1893, Defendant's Exhibit 150, p. 10 (Wyman). Vol. 29

HEIGHT MEASURED WHILE MAT WAS ON BARGE.

The height of these multiple mats were measured while the mat was on the barge before launching, and Cooper testifies (Court Martial Vol. 2), p. 218, that the height was taken at 6 or 7 places over the mat and the average taken as the height of the mat.

Captain Gillette testified (Shields Vol. 1), p. 474-475 (see *ante*, p. 388-9), as to the manner in which the height of the multiple mat he saw at Cumberland Sound was measured July 29, 1897, by Marian Twiggs, Assistant Engineer and John M. Hall, Inspector, by shoving the pole through the mattress at the crossings of the grillage poles, and taking the reading of the feet and fractions thereof from the pole as in soundings, and taking the average as the height of the mattress. We have already referred (*ante*, p. 404) to the fact that this height included the grillage poles.

HEIGHT DUE TO GRILLAGE POLES.

That a large part of the height of the mattresses was due to grillage poles and that Carter so intended it is shown by Carter's letter to C. A. Felber, Inspector, May 5, 1893 (*ante*, p. 348), in which Carter says:

Letter Carter to Felber.

> "Each course should be built of a double thickness of mattresses, *the grillages being of good sized poles, in order to obtain vertical height.*"

The average diameter of the grillage poles iin Carter's third design mattress is 4-1/2 inches.

It is clear therefore, that wherever there is a single layer (half grillage) of poles between the layer of fascines, 4-1/2 inches of the height of the mattress is due to that half grillage. Also whenever there are two layers of poles crossing

each other (a full grillage) between each layer of fascines, 9 inches of the height of the mattress is due to that full grillage.

A single course third design mat as constructed therefore, which is made up of a full grillage at the bottom, a full grillage at the top, and a layer of fascines between them, and the height of 2 feet or 24 inches would be due to 9 inches for two pole diameters in the upper grillage, and 9 inches for two pole diameters in the bottom grillage, making 18 inches for poles, and leaving only 6 inches for the fascine layer where compressed between the poles.

MULTIPLE MATS UNDER 1892 CONTRACT WERE LARGELY OF CRIB CONSTRUCTION AND HEIGHT OF MATTRESS DUE TO FULL GRILLAGES OF POLES BETWEEN THE BRUSH LAYERS.

In the early part of the execution of the 1892 contract at Savannah Harbor, where two or more mattresses were built together, only the bottom grillage of the superimposed mattress was left out. But a full grillage of poles was thus still left between each layer of brush.

This is stated in Carter's letter to Ensey of February 14, 1893 (*ante*, p. 356).

To like effect is Carter's testimony, *ante*, p. 348.

It appears also from Defendant's Exhibit 150 (Wyman) compilation of tri-monthly reports of Inspectors for the 1892 contract at Savannah Harbor that nearly all the multiple mats put in the work were built in steps.

This is shown for instance by Sheet 20 of Defendant's Exhibit (Wyman) compilation of mattress dimensions put in at Cockspur Island Training Wall, where the dimensions of a number of eight course mats are given.

it was built in five steps, which commencing at the bottom were:

Mattress No. 44.

2 courses each	45 feet wide,	106 feet long.
1 course	40 feet wide,	106 feet long.
1 course	35 feet wide,	106 feet long.
1 course	30 feet wide,	106 feet long.
2 courses each	30 feet wide,	106 feet long.
2 courses each	25 feet wide,	106 feet long.

The height of this mattress is given as 12.1 feet.

The testimony is that even under the 1896 contract, they generally put in a full grillage of poles at the steps (*ante*, p. 353).

If we allow a full grillage of poles at the top and bottom and between each of the eight courses of brush, it would make nine full grillages of 9 inches to the grillage in the height of the entire mat, or 81 inches of the height of the mat due to grillage poles. This is equivalent to 6.7 feet.

That is to say:

Height of entire mat as measured	12.1 feet.
Height due to grillage poles	6.7 feet.
Height due to 8 brush layers	5.4 feet.
Height of one layer of brush (1/8)	.67 feet, or 8 inches.

Or if in the same way we allow only half a grillage of poles between the layers of brush except at the bottom and top, and at the steps the result is 9 inches for the thickness of brush between the fascines.

Since the fascines were to be 9 inches at the choke, and since the testimony is (*ante*, p. 372) that the brush bundles bulged out between chokes so as to have a diameter of from 2 to 4 inches larger, the compression of the fascines to about 8 or 9 inches between the poles, before being placed

in the jetty, is really less than what would be expected for fascines of that character.

This documentary evidence falls far short of showing that more brush was put in than called for by the specifications as a substitute for the omitted poles. On the contrary the evidence is that brush bundles were loosely constructed and were not compacted together in building the mattresses, but merely laid in place in the mattress, sometimes placed end to end, sometimes lapping.

Flimsy Character of Construction Shown by Shrinkage Immediately After Sinking.

Cooper testified that these eight course mats built as above described for the fresh water work in the Savannah River under the 1892 contract, which measured 12 feet, would shrink to less than 8 feet when sunk in the work with the slight layer of stone put on it. (Court Martial Record Vol. 2) p. 322.

That under the 1896 contract, the mattresses put in at Tybee Breakwater shrunk one-half when sunk (Court Martial Vol. 2), pp. 321-322.

E. R. Conant, Assistant Engineer under Carter, on the 1894 contract at Cumberland Sound, testified to the shrinkage then. (Court Martial Record Vol. 4) p. 778:

"Q. Now, how much stone was put on the top course where the mattress was seven and eight courses high?

A. I should have to refer to note books which are filed away for the exact statement, but, if I remember rightly, about 9 inches when the mattress was sunk; then after that, after eight or ten or a dozen mattresses were sunk, they would come back again, and take some barges of stone and distribute the stone over the top of all.

Q. What was the ultimate quantity put on?

A. Not more than one and one-half feet, perhaps a foot thick for the covering.

Q. How much subsidence was there on the mattresses due to the weight of the stone on the mattresses?

A. I would estimate from two to three feet depression; that is in the seven course mattress."

Vol 4 (1625 (Page 779):

"A. The stone, most of it, would go into the jetty to a certain extent, so that the height gained by the stone was very little.

Q. How do you mean, go into the jetty?

A. It would go down into the brush."

HEIGHT OF MULTIPLE MATS, SAVANNAH HARBOR CONTRACT OF 1896.

RECORD EVIDENCE.

Vol 31

Exhibit 368 (Shields) compilation of the tri-monthly reports of inspectors on the works, gives a detailed statement of the height of each multiple mat sunk under the 1896 contract at Savannah Harbor. It shows that the greater part of the work under that contract was done on what was designated as "The detailed extension of Oyster Bed training wall," otherwise spoken of as "Tybee Breakwater."

Three Course Multiple Mats.

It shows that 121 of the mattresses there put in were multiple mats built in three courses with the exception of four one course mats. Cooper testified (Court Martial Vol. 2), p. 246, that the average height of the three course mats put in were 5 feet. An inspection of Exhibit 368 will show that the greater portion of them were 5 feet high, measured on the barge, some they were only 4 feet in height and some few at the very commencement of the work were 6.7 feet, but none as high as 6 feet after the first ten mattresses put in.

It is easy to determine just how much of the given height was due to the three layers of brush. The multiple construction for three courses contained (*ante*, pp. 350-351) three full grillages of poles, which would give to the height of the mattress 6 pole diameters of four and one-half inches each, or 27 inches.

Height of mattress 5 feet equivalent to..60 inches.
Height due to six pole diameters.....27 inches.

Height due to three layers of brush.....33 inches.
Height due to one layer brush (1/3).....11 inches.

Eight Course Mats.

The same Exhibit 368 (Shields), sheet 1, shows that there were several 6, 7 and 8 course mats sunk at Dam 31 and Cockspur Island, in the Savannah River under the 1896 Contract.

Taking mattress No. 25, sunk May 13, 1897, the height of which was 10.5 feet, that being on an average of the 8 course mats, it appears that it was built in three steps, which, commencing at the bottom, were:

Mattress No. 25.

3 courses each 40 feet wide, 73.5 feet long.
3 courses each 35 feet wide, 73.5 feet long.
2 courses each 30 feet wide, 73.5 feet long.
Height 10.5 feet.

Such a mat built as described (*ante*, pp. 350-1), would have six and one-half grillages of poles or 13 pole diameters measured in its height, which at four and one-half inches each is equivalent to 58.5 inches or 4.88 feet.

Height of entire mat as measured.10.5 feet.
Height due to grillage poles.....4.9 feet.

Height due to 8 layers of brush ..5.6 feet.

Height of one layer of brush (1/8) .7 feet,
or 8.4 inches.

Since the brush bundles as constructed were about 9 inches at the choke or tie, and according to the testimony bulged between the chokers, so as to have a diameter of about 12 or 13 inches (Hewlett Vol. 1), p. 137, and since they were not compacted into the mattress, but simply laid in side by side, and end to end or lapping according to the testimony, it will be seen that eight and one-half or even 11 inches, is not more thickness than such layers would be expected to measure between the poles, when such mattress is measured on the barge before any stone is put on it.

Compressed One-Half When Stone Was Put On.

The testimony of the witnesses as well as Exhibit 180 (Shields) shows that only the fourth class or light Florida stone was placed on the mattresses in this work.

If we refer to the tri-monthly report of Inspector for Mattress No. 44 heretofore referred to put in March 9, 1897, Defendant's Exhibit 35-B and Q, Shields, it shows that the dimensions of this mattress were 100 by 53.2 feet, making 591.11 square yards of surface. That upon this surface was put only 158.78 cubic yards of stone, or .268 of a cubic yard of stone to the square yard of mattress, or .268 of 36 inches (the height of a cubic yard) gives 9.6 inches of stone thickness for the top of each multiple mat.

Notwithstanding this light layer of stone put on these mattresses, Cooper testified (Court Martial Vol. 2), p. 321;

> "I think in the breakwater that the mats settled nearly a half when rock was placed on them, in some cases more than that."

HEIGHT OF MULTIPLE MATS, CUMBERLAND SOUND CONTRACT OF 1896.

There was a record kept by Marion Twiggs, Assistant Engineer, of the serial number of each multiple mat sunk in the Cumberland Sound work under the 1896 contract, and of the height of the mattress as measured on the barge before launching. These heights were given in each tri-monthly report made by him to Carter.

Marion Twiggs made for the Board of Officers a compilation of these tri-monthly reports, showing number of mattresses, number of courses, and height as measured on barge, which is in evidence as Board Exhibit 17 (War Department 98). Twiggs verified the correctness of this compilation in his testimony before the Court Martial (Court Martial Vol. 1), p. 187, and the same was offered in evidence (Court Martial Vol. 2), p. 212.

Twiggs testified (Court Martial Vol. 1), p. 191: That before putting a mattress in place in the jetty, soundings would be made to get the depth of the ground. That after the mattresses were sunk soundings would be made on top of the mats. The difference between these measurements would of course give the height which the mattress with the layer of stone on it had raised the jetty above the bottom.

There was an office record of these measurements of the mattresses after sinking which was kept by Twiggs while Assistant Engineer on the 1896 contract.

These original record books, kept by Marion Twiggs, Assistant Engineer, were identified as Exhibits 2 and 3 (Hewlett Vol. 1), pp. 8 and 9, and were offered in evidence (Hewlett Vol. 1), pp. 79-80.

Referring now to Exhibit 8 (Court Martial) for the date, number, courses and height of the mattresses, and referring

to Record Book Exhibit No. 2 (Hewlett) for the measurement of the mattress height after sunk with the layer of stone on it, the following table gives the height of a few of the eight course mattresses as put in, taken consecutively sunk in the Cumberland Sound work.

HEIGHT OF 8 COURSE MULTIPLE MATS, BEFORE AND AFTER SINKING, CUMBERLAND SOUND, 1896 CONTRACT.

Date Sunk.	Mat No.	Width of Courses, Feet.	No. of Courses.	Height on Barge.	Height after Sinking, Feet.	Loss of Height.
1897.		SOUTH JETTY.				
May 10.	7	5 of 80 3 of 100 4 of 80	8	10	5.7	4.3
May 11.	8	4 of 100 4 of 81	8	10.5	5.9	4.6
May 12.	9	4 of 99 4 of 78	8	10.2	6.	4.2
May 13.	10	4 of 98 4 of 81	8	9.5	5.3	4.2
May 14.	11	4 of 100 4 of 83	8	9.6	5.3	4.3
May 15.	12	4 of 102 4 of 82	8	9.8	6.	3.8
May 22.	13	4 of 100 4 of 82	8	9.4	6.7	2.7
May 24.	14	4 of 102	8	9.2	5.6	3.6
		NORTH JETTY.				
June 28.	1	4 of 80 4 of 100 4 of 80	8	9.4	5.	4.4
June 29.	2	4 of 100 4 of 80	8	8.5	5.5	3.
June 30.	3	4 of 100 4 of 80	8	8.9	5.5	5.4
July 1.	1	4 of 100 4 of 80	8	8.8	8.3	.5
July 2.	2	4 of 100 4 of 80	8	8.5	5.5	3.
July 3.	3	4 of 100	8	8.3	4.5	3.8

From which it will be seen that the eight course mattresses averaged only 9 feet in height measured on the barge. Also that the mattresses shrank up more than one-third of their height, immediately after sinking.

And this shrinkage was caused by a layer of stone less than one foot in thickness on top of the multiple mat. (See testimony of Twiggs (*ante*, p. 397).

Bacon calculated from the record of the cubic yards of stone placed on each mat, as stated in the tri-monthly reports, that the layer of stone was on the average but 9 inches thick to the mat.

The foregoing documentary evidence of the height of the mats and their shrinkage as entered on the records at the time, is better evidence than the testimony of any witness.

Thickness of Brush Layers Between Poles.

If we consider one of the eight course multiple mats at Cumberland, of which the average height was about 9 feet or 108 inches, measured on the barge, it is a very simple calculation to determine the average thickness of each brush layer between the poles. If built as the witness described they were built (*ante*, pp. 350-1), with a full grillage of poles at the top and bottom and a half grillage between the intermediate layers of brush, there would be five and one-half full grillages, or 11 pole diameters included in the height of the mattress. The average pole diameter being four and one-half inches according to the specifications, there would be 49.5 inches of the height due to pole diameters.

Height of multiple mattress.....108 inches.
Height due to 11 pole diameters..... 49.5 inches.

Height due to 8 layers of brush.....58.5 inches
Height due to 1 layer of brush (1/8)...7.3 inches.

If There were also a Full Grillage at the Steps.

Height of multiple mattress.....108 inches.
Height due to 12 pole diameters .....54 inches.

Height due to 8 layers of brush.....54 inches.
Height due to 1 layer of brush (1/8)....6.75 inches.

We can therefore see how loose the brush must have been in the bundles, in order that the layers of brush should have

been compressed to six and three-quarters to seven and one third inches before and stone had been put on the mattress at all.

Thickness of Brush Layer after Stone Put on.

As we have already seen, the shrinkage in height of these multiple mats at Cumberland Sound, even including in the height of the mat after sinking the layer of 9 inches of stone on it (which sunk into the mat—*ante*, p. 410), was more than one-third of the height.

It is easy to calculate how thick the average layer of brush was in the jetty after sinking.

The average height on the barge was about 9 feet. The height after sinking 6 feet, we therefore have

Height of multiple mat after sinking	72 inches.
Height of 11 pole diameters	49.5 inches.
Height due to 8 layers of brush	23.5 inches.
Height due to 1 layer of brush (1/8)	2.9 inches.

In other words, with a single layer of about 9 inches high Florida stone on top of an eight course multiple mat at Cumberland Sound, the brush layors were compressed to less than 3 inches between the poles, on the average.

HYPOTHETICAL QUESTIONS OF DEFENSE TO EXPERTS AS TO QUANTITY OF BRUSH, BASED ON HEIGHT OF MATTRESSES.

The defense have undertaken to prove that Carter put more brush into his layer of brush bundles than required by the specifications by certain hypothetical questions put to experts.

Geo. Y. Wisner's Testimony.

Mr. Rose, for the defense, first describes the multiple mat (Shields Vol. 3), p. 1698:

(1) As consisting of a full grillage of poles at the top and bottom of the multiple mat and half grillages of poles between the layers.

(2) He next repeats (Shields Vol. 3), p. 1699, the table of heights of multiple mats as Carter *first* gave them to Cooper in 1893 before he reduced the heights, to wit:

1 course, height 2 feet.
2 courses, height 3½ feet.
4 courses, height 5 feet.
6 courses, height 7½ feet.
7 courses, height 10 feet.
8 courses, height 12 feet.

(3) He then propounds to Geo. Y. Wisner, expert witness for defense, the following hypothetical question (Shields Vol. 3), p. 1699:

> "*Assuming* that the reports made by the inspectors is true, and *that the mats were put in according to that table of heights*, measured and paid for according to that table of heights; does that convey to your mind any idea as to the construction of the mats, or rather the quantity of material in them?"

To this the witness answered (Shields Vol. 3), p. 1701: Vol. 25 P. 12109

> "It conveys this information, or rather shows this to my mind: That with a given number of these mattresses superimposed, one on top of the other, that whether they were tightly compressed or not originally, the lower ones under that load must be to a certain extent pretty well compressed; and *if these stood up a height, such as is mentioned here,* averaging, taking them all through together I should say, about 18 inches as they run, that *taking out the thickness of your binding poles,* the amount of the brush which must have been put in there must have been fully up to or more than a single row of 9 inch fascines. In other words, it conveys to my mind what seemed almost the fact, that the brush must have been in excess of that in mattresses containing only fascines 9 inches in diameter."

It will be seen that both the question and the answer assumes that each course of mattress averaged one and one-half feet in height, and that an 8 course mat built with a half grillage of poles between the layers of brush (as they were built in Cumberland Sound under the 1896 contract), measured 12 feet in height.

But, as we have already seen (*ante,* p. 414), there was no multiple mat put in at Cumberland Sound 12 feet in height, and the average was only 9 feet high.

Neither would the premises laid fit the mattresses put in at Savannah under the 1892 contract, because there the mattresses were built in a great many steps, and there was a full grillage of poles between the courses.

If the eight course multiple mat at Savannah Harbor in 1892 was properly 12 feet in height, why should Carter reduce the height of eight course multiple mats at Cumberland Sound to 9 feet in height?

It shows that the difference was due to the greater number of grillage poles put in under the 1892 contract as has already been pointed out (*ante,* p. 407).

Colonel Bixby and Mr. Cooley's Testimony.

Similar questions were put by Mr. Stone to Colonel Bixby witness for the defense, and answered in about the same way. (Wyman Vol. 7) p. 23. And similar questions were put by Mr. Stone to Mr. Lyman E. Cooley, expert witness for defense, and answered about in the same way. (Wyman Vol. 8) pp. 4052 and 4054.

But what are these answers worth based upon false premises?

Height of Mattresses No Criterion of Compactness.

A farmer may have a room full of hay ten feet high. If he compresses his hay into closely compacted bundles, and lays these bundles closely together over the same floor, they would not near fill the room to the same height.

The principle involved in this is brought out in the cross-examination of Mr. Cooley (Wyman Vol. 8), pp. 4129 to 4132. His final admission being stated as follows (Wyman Vol. 8), p. 4131:

> "Q. So that if you wanted to judge of the amount of material in a mattress of a certain height, say 6 feet, you could not rely alone on the fact that the mattress measured 6 feet in height; you would have to consider whether or not the fascines composing that mattress were properly constructed, whether or not they were tightly compressed and according to the specifications, or whether or not they were loosely built?
>
> A. I think that would be true."

DEFENDANTS' ATTEMPT TO PROVE LARGER FASCINES.

The specifications for contract No. 4820 of September 16, 1892, for Cumberland Sound, required that

> "The fascines will be from 60 to 100 feet in length, and must be compressed tightly by an approved form of choker, to a diameter of 9 inches at intervals of two feet."

It is clear that a continuous fascine so compressed at the choke to a diameter of 9 inches must have a diameter considerably larger between chokes, and varying according to the extent of the compression or force applied in making the choke. (See original drawing attached to Gilmore's contract No. 2934, of December 5, 1884, for Augusta. Exhibit 97 on file.

Tomas F. Gaynor, for the defense testified relative to making certain fascines for a mattress at Cumberland Sound after Captain Gillette came, and under the instructions of Inspector Hall, which he says, was constructed differently from the mattresses previously made.

He says they were choked to a diameter of 9 inches, but between the choke the fascines would "bulge out." That the fascine was larger around at the point where the binders did not come around the fascine, that it was at the point where the binders did (Shields Vol. 3), p. 2593-4.

That when these fascines were laid side by side he could step through the hole made by the compression at the choke (Shields Vol. 3), p. 2594.

For this reason he says those fascines did not make as tight a mattress as he had been making during Carter's time (Shields Vol. 3), p. 2594.

To have enabled a man to step through a hole made in that way--considering the length and breadth of such a hole—the

distance between the two fascines at the chokes must have been at least 5 inches. This would make the depth of the depression into the fascine at the choke at least 2-1/2 inches. Adding to the 9-inch diameter at the choke the 2 1/2 inches "bulge" on each side, this would give 14 inches as the diameter of the general run of the fascine between chokes.

W. N. Connell, another foreman, testified that the fascines under Carter were made out of brush runnning from 10 to 16 feet in length and from 2 to 3 inches in diameter at the butt (Shields Vol. 3), p. 2627. That this brush was placed in racks and was bound down with twitchers—4 foot sticks with a chain or rope between them, and two men took hold of them, put them against the bundle, pressed them down compactly and tied them with wire or string. That two men would twist and bind while a third man would tie the fascine (Shields Vol. 3), p. 2614.

Now while, as indicated in the testimony of Thomas F. Gaynor, above referred to, the Carter fascine was not bound as tight as the Gillette fascine, and did not have near so much compression, if it was 9 inches at the choke, it certainly could not have had less than 1 1/2 inches compression at the choke, if the method of choking had been applied at intervals of 2 feet to the brush material described. This bulge of 1 1/2 inches added to the diameter of 9 inches at the choke would make 12 inches as the least diameter; the general run of a Carter fascine could have between choke, if the diameter be 9 inches at the choke. And necessarily such a fascine would have a good deal less material in it than in the Gillette fascine described by Gaynor.

Mr. Stone atorney for Carter claimed that the evidence showed that the fascines put in averaged 13 inches in diameter at the bulge (Hewlett Vol. 1), p. 137.

Thomas F. Gaynor further testified that a bundle of brush which made part of the length of a fascine, was choked

about one foot from one end, and at intervals of 2 feet along its length until within 2 feet to 2 1/2 feet from the other end. That the bundle had a "butt" end and a "bushy" end (Shields Vol. 3), pp. 2597-8-9 and 2577-8. The above considerations are sufficient to show that to comply in any degree with the requirements of the specifications as to size of fascine at the choke, that the Carter fascine must have been at least 12 inches at the "butt" and throughout the general run of the body of the fascine other than at the choke, at which place it would be diminished to 9 inches. Now, let us see what size they were according to the testimony of the witnesses for the defense—

Thomas F. Gaynor, foreman: The diameter of the fascines were from 12 to 13 inches (Shields Vol. 3), p. 2582.

W. N. Connell, foreman: We were supposed to get the diameters of the fascines 1 foot solid, we were told to have them about a foot (Shields Vol. 3), p. 2615.

J. H. Gaynor, foreman: I should judge the diameter of the fascines to be 12 to 14 and so on. Their aim was to get 12 inches (Shields (Vol. 3), p. 2686.

Campbell Ford, Inspector, for defense, was engaged assisting Mr. Cooper on the training wall below Fort Pulaski in the fall of 1894 (Shields Vol. 3), p. 2542. The fascines were of the specification, size 9 inches at the choke (Shields Vol. 3), pp. 2543-2558.

Clarence C. Cole, foreman of Brush camps, for defense: The fascines were built 12 inches in diameter, sometimes a little more (Shields Vol. 3), p. 2673. About 5 per cent. of them were as small as 9 inches in diameter. This made them very irregular (Shields Vol. 3), p. 2680.

P. 422. Note

*Col. Bixby, witness for defense, testified that a fascine made according to the Carter specifications, that is, "If they were choked at intervals of 2 ft., to 9 inches, they would probably be about 12 inches where they were not choked." (Vol. 18, p. 8598.)

To like effect Lyman E. Cooley, expert witness for defense. (Vol. 18, p. 8564.)

Back-Bone Fascine.

It will be remembered, that Ernest B. Parker, witness for the Government testified (*ante*, p. 371), that the brush bundles were constructed at Cumberland under the 1896 contract, by taking an oak or pine sapling for a back-bone and tying around it the small brush, pine tops, saw-palmetto and other material.

Clarence C. Cole, witness for defense, and foreman for the contractors, fully corroborated this testimony as to this back-bone construction under the Savannah Harbor contracts.

Clarence C. Cole testified (Court Martial Vol. 16) pp. 3700-3701:

"Q. Did you clean the brush as you went along?
A. Yes, sir.
Q. Took everything in sight?
A. No, sir; not everything. Some of it would be too large.
Q. But everything of a brush character?
A. Oh, yes, sir.
Q. What kind of wood is the back-bone of that fascine you helped to make?
A. I don't know what that wood is.
Q. Where did you cut it?
A. About four miles down the river on Mr. Rowland's ground. I had permission to cut it.
Q. It is about the same size that was used in the fascine down below for a back-bone?
A. Oh, yes, sir."

J. G. McGiffen, a visitor to the brush camp, for the defense: As near as I can recollect the fascines were about 9 inches in diameter and 8 feet long. (Shields Vol. 3) p. 2076.

Edward D. Lukenbill, a visitor to the camp: The fascines were choked up to 12 to 18 inches in diameter (Shields Vol. 3), p. 2091. That this witness is badly off on his facts is shown by his testimony that he visited the camps in 1896, where the mattresses were being built on frames on the shore,

the process for which he describes, and that he never saw one built on a barge (Shields Vol. 3), pp. 2093, 4, 5, 6. Mr. Rose attorney for defense admits that witness is all wrong in this (Shields Vol. 3), p. 2094. They were all built on barges. The witness then admits that he had been visiting the camps occasionally for 12 years, and what he saw might have been on some former occasion. (Shields Vol. 3), p. 2096.

It is impossible to tell from the testimony of the witnesses what they mean by diameters of the fascines. Usually the diameter of a cylinder is taken at the "butt." Connell one foreman describes the making of the bundle of brush so entirely different from Thomas F. Gaynor another foreman that it is difficult to imagine to what part of the so-called fascine his statement of "diameter" could apply.

He describes the bundle as about 15 to 17 long. The brush going to make up the bundle was so laid that the butts were turned toward the centre of the fascine, making the fascines *smaller at the ends than in the middle* (Shields Vol. 3), p. 2621. Instead of making a continuous fascine running across the mattress, of uniform diameter, choked to nine inches at intervals of two feet, these bundles of brush were end to end, with a slight lap, but not tied together, and in this way it took about seven of these bundles of brush to make out the length of a fascine across a 100-foot mat (Shields Vol. 3), pp. 2621-2625. There is nothing in this evidence to indicate that a fascine so "discontinuously" constructed would begin to have the material in it that there would be in a fascine where:—

> "The brush must be carefully laid so as to break joints and to make a continuous fascine, extending completely across the mattress," as described in the specifications and as further described.
>
> "Must be compressed tightly by an approved form of choker to a diameter of 9 inches at intervals of 2 feet."

It is contended by the defendants' counsel, however, that

the omission of the clause, headed "Third Design," in the specifications, of the lines found under the head of "Second Design," describing the fascine as "a continuous fascine, extending completely across the mattress," made it permissible of the engineer to allow the fascine to be made of the disconnected lapped bundles of brush.

We differ in this. An examination will show that the three clauses, headed "Second Design," "Third Design," and "Fascines," are mutually dependent. Neither of them can stand alone as descriptive of the mattress or fascine without reference to the other. For instance: The clause "Second Design" wholly fails to state the diameter of the fascines intended to be used, or their choke, or the length of the fascine further than that it is to be continuous, extending completely across the mattress. The size of the mattress, 60 feet by 100 feet, must be ascertained by the general provisions included under "Third Design," applicable to all three of the designs, and these dimensions are seen to agree with the lengths given for the fascines in the separate "Fascine" clause. The clause "Third Design" wholly fails to state the diameter of the fascines intended to be used, or their length or details of construction. These must be taken from the "Fascine" clause, which, as we have seen, gives the details of the fascine intended for the "Second Design" mattress.

Colonel Bixby, witness for defendant, testified on cross-examination (Wyman Vol. 8), p. 4246, that the clause in the specifications fixing the length of all fascines related back to the clause descriptive of the third design mattress, and mattresses built of shorter length fascines would not be in strict accord with the specifications.

A fascine 60 feet long, choked to a diameter of 9 inches at intervals of 2 feet, is quite a different thing from a succession of lapped bundles of brush not even tied at the lap (Shields Vol. 3), p. 2692.

There was no difference in the construction of fascines under 1892 and 1896 contracts at Savannah Harbor (Testimony of J. H. Gaynor (Shields Vol. 3), p. 2687).

The great saving to the contractor in labor which results from allowing the use in the mat of the succession of short bundles, in lieu of the continuous fascine is shown by the following testimony for the defense.

The contractors usually obtained their brush from the hands at a price per bundle (*Connell*, Shields Vol. 3, pp. 2626-7; *Cole*, Shields 2676-7).

Bringing the brush out of the woods in bundles was the usual way it was done, whether the brush was intended to be put into a mattress as loose brush or as fascines (*Schermerhorn*, Shields Vol. 3, pp. 2058-9). And in either case the brush would be put on a fascine horse and choked for convenience and economy in transportation, the only difference being that if intended for a loose brush mattress the bundles might be larger and only approximately choked (Shields Vol. 3), p. 2059.

COULD NOT CONSTRUCT CONTINUOUS FASCINE AT THE BRUSH CAMPS.

All the witnesses for the defense questioned on the point, testify that with the brush camps situated as the average brush camps were, that as a practical question the 50 or 100 foot continuous fascine, such as we have been discussing, could not be constructed at the brush camps and transported or hauled to the wharf for laying into the mattress. That the brush would have to be hauled to the wharf and there made into the fascine. (Testimony of Ford (Shields Vol. 3), p. 2560; Connell, p. 2626; John H. Gaynor, p. 2692).

As actually made by the defendant, the brush was cut and made into bundles at the brush camps, the bundles varying in lengths according to the testimony as follows: Connell, 15

to 17 feet (Shields Vol. 3), p. 2617; J. H. Gaynor, 15 to 16 feet (p. 2691); Thomas F. Gaynor, 15 to 18 feet (p. 2581); Campbell Ford, short enough to put on a 12 foot wagon (p. 2558); John McGiffen, about 8 feet (p. 2076).

These bundles of brush were hauled to the wharf in a wagon, unloaded onto the barge and laid into the mattress just as they were, Connell (Shields Vol. 3), p. 2624.

EVERY FOREMAN IT SEEMS MUST HAVE HAD A DIFFERENT WAY OF HAVING THE BUNDLES MADE AND A DIFFERENT WAY OF LAYING THEM INTO THE MATTRESS.

Campbell Ford, Inspector, for Defence, testifies as to construction in fall of 1894. That the bundles were placed "end to end" "jammed up pretty close." (Shields Vol. 3), p. 2559.

W. N. Connell, the defendant's foreman, testifies that the bundles were made big in the middle and tapering off to each end (Shields Vol. 3), p. 2621, and that in laying them into the mattress the ends were lapped about a foot (p. 2622).

John H. Gaynor, that in laying the bundles in the mat, they were lapped about a foot (Shields Vol. 3), p. 2691.

Thomas F. Gaynor, foreman at the Cumberland Sound brush camps in 1896, describes the bundles as having one end, a "butt" end (Shields Vol. 3), pp. 2578-2597, and tapering off to the other end, the ties stopping about two and one-half feet back from that end, which opened by reason of being loose spread out (pp. 2597-8-9). He says that in laying these bundles in the mattress they were laid in alternately, big end and little end lapped about one foot, to a foot and a half to reach across the mattress (Shields Vol. 3), pp. 2578-2598-9.

W. N. Connell testifies, that if a mattress was made out of bundles of brush contsructed in the manner described by Thomas F. Gaynor and laid lapping as described, that it would

leave holes between the fascines at the butts of the bundles where the laps are (Shields Vol. 3), p. 2622.

This is precisely what Captain Gillette testifies he found in the Cumberland Sound multiple mat inspected by him on his first visit there.

Gillette testified:

> "Q. You say you tried to walk across the mattress?
> A. Yes, I tried to walk across it.
> Q. Was that just in one place of the mattress it could not be done?
> A. I went all over it; it was the same everywhere. If you wanted to go across it with any degree of speed or comfort, you had to walk a pole or grillage of poles. Almost anywhere you stepped you were liable to go in two feet or the whole length of your leg. I went in the length of my legs at least half a dozen times. Possibly by carefully picking the place you were going to step each time on the larger piece of brush you could get across otherwise, but in crossing the mattress I walked the pole every time" (Shields Vol. 1), p. 484.

Under the form of construction adopted, according to the testimony of defendant's own foreman, we see this must have been true.

The leaves and twigs at the loose end of the bundle might to a certain extent cover the holes, but the vacancy at the "butt" end of the bundle must necessarily be there.

The first row of lapped bundles making up the first fascine was laid at the end of the mattress and not fastened down. The succeeding rows were merely laid alongside of it and pushed up to it by hand. Testimony of Thomas F. Gaynor (Shields Vol. 3), p. 2605. It is seen therefore that the vacant spaces must have existed.

Foundation Course of Mattresses for Stone Jetty.

LOG MATTRESS WOULD NOT DO FOR FOUNDATION COURSE.

Capt. W. M. Black (Court Martial Vol. 11), p. 2294-5, explained why the log mattress was unsuitable for a foundation course on an ocean bar. That at the ebb tide the jetty formed a dam over which the water poured, and the water passed through the interstices of the logs, caused a whirl inside the jetty, which lifted the sand out from under the mattress and let it down into the sand.

He also testified (Court Martial Vol. 11), p. 2301: That on account of its inflexibility, the waves gave the log mattress a rocking motion, which caused it to sink in the sand, and that it was quite essential that whatever is placed on that sort of bottom should be sufficiently flexible to fit closely to it.

To like effect is the testimony of Geo. Y. Wisner, for defense (Court Martial Vol. 11), pp. 2412-13.

ENGINEERING PURPOSE OF BRUSH MATTRESS FOUNDATION.

TO PREVENT SCOUR AND CREEPING OF BAR SEAWARD.

The engineering purpose of laying a brush mattress foundation for a stone jetty, appears to have been:

(1) To prevent subsidence or sinking of rock into the sand.

(2) To prevent scour ahead of the jetty during its construction.

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Capt. Black testified (Court Martial Vol. 11), p. 2294:

To Prevent Subsidence.

"Q. You say you never had any settlement or subsidence on your jetties at the mouth of the St. John's after you began to use the brush mat?

A. I say I have never known of any subsidence under the brush mattresses."

To Prevent Scour.

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(Page 2299.)

"Q. Did you ever have any scour in front of the jetties at the mouth of the St. Johns?

A. Oh, yes, I made it when I wanted it.

Q. When you did not want it, how did you prevent it?

A. By laying a thin layer of mattresses some distance ahead of the work.

Q. Running how far ahead of your stone work?

A. I think we used to run it about 400 or 500 feet out of an abundance of caution: I do not think it would be necessary to run it over 300 feet.

Q. If you had kept your stone work and your mattresses going at the same rate, you would have had scouring at the end of your jetty?

A. Yes, I would have had scouring out at the end of the jetty, so I simply kept enough of stone on the jetty to ballast the jetty, and to hold the mattresses in place.

Q. This scour in front of the jetty is sometimes a very serious matter, is not it?

A. Yes, sir.

Q. Sometimes amounting to as much as 15 or 16 feet?

A. Easily."

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(Page 2300):

"Q. Do you happen to know there was considerable scour in Winyaw Bay (S. C.) in front of the North Jetty?

A. Yes, there was for a time, until the construction was changed.

Q. Due to the building of one thing and another of that sort?

A. To the trestle."

THIN LAYER OF SMALL ROCK LAID AHEAD OF THE JETTY BEING CONSTRUCTED PREVENTS SCOUR.

Arthur S. Bacon, Assistant Engineer on the Cumberland Sound Work of 1900 testified (Hewlett Vol. I), p. 73:

"Q. Now, in building a stone jetty like that, carrying out say the south jetty, what method did the contractors adopt under your supervision to keep the current of water from washing out the bottom ahead of the jetty in the direction in which you were building?

A. The contractors were required to lay a thin layer of rock ahead of the work, of sufficient width to support the final structure, and this was kept ahead of the work for several hundred feet, in some cases, generally three or four hundred feet.

Q. That thin layer of rock would allow the water to wash over it?

A. That took the place of mattress work which was laid for the purpose of preventing any excessive scouring ahead of the work, and it would allow the water and the sand carried by the water to wash over it.

In some cases this layer ahead of the work was found covered with sand: it was built entirely of small rock."

WISNER FOR DEFENSE ON SCOUR.

Geo. Y. Wisner, expert witness for the defense, testified (Court Martial Vol. II), p. 2413:

"Q. Having in view the work to be accomplished here at Cumberland Sound and at Tybee Breakwater, would a thin mattress of brush be as valuable as a thicker one?

A. I know of no reason why a thin mattress should be used at all; it is useless.

Q. Please explain why?

A. For the simple reason that a thin mattress adds but very little to the height of jetty construction, and that a stone jetty can be built with the same safety so far as subsidence into the bottom is concerned as when resting on a thin mattress construction.

Q. Then what advantage has a thick mattress?

A. One of the principal reasons for using a mattress in such locations usually arises from inability to obtain material with sufficient rapidity to push the jetties forward rapidly enough, so that there will not be a scour in advance, or a pushing of the bar seaward.

Q. Explain why a scour in advance has its dangers?

A. With slow construction it sometimes amounts to more than twice the depth of the water at the point where the jetty is to be constructed, that is to say, with water four or five feet deep, we might have to build in water fifteen feet deep. In cases of that kind where material cannot be obtained sufficiently rapidly to construct your work to prevent a scour, it might be economy to put in brush which you knew would be eaten up by the teredo entirely.

Scour Is at the End of the Jetty.

Q. Scour takes place at the front end of a jetty?

A. Either that or under.

Q. Why?

A. From the action of the currents on the end. It is a combination of wave and current action."

It will be observed that the very reason Wisner gives for scour in advance of the jetty as it is being constructed, would be aggravated instead of being alleviated by the use of thick mattresses built up in multiple form 9 or 10 feet high.

Cross-Examination.

Vol 5 p 2683

(Court Martial Vol. 11) p. 2504:

"Q. Did you ever hear of running the mattress work ahead and preventing that scour?

A. Yes, sir.

Q. Has not that been a success?

A. It has helped.

Q. Has it not been a great success?

A. The work at one or two points I think, has almost completely stopped the scour."

On cross-examination before Commissioner Shields, *Wisner* testified (Shields Vol. 3), p. 1727:

That the fact of scour ahead of jetty construction and creeping of the bar seaward, had been a matter of common knowledge for over 20 years, and that engineers in making estimates for a project would take cognizance of it.

THE USE OF THE SINGLE COURSE BRUSH MATTRESS AS A FOUNDATION FOR A STONE JETTY, INTRODUCED BY CAPT. W. M. BLACK IN 1886–1888.

Capt. W. M. Black stated before the Board of Officers (Board Record Vol. 2), pp. 476-479:

(By Colonel Gillespie):

Black at St. Johns River, 1886 to 1891.

"Q. Captain Black, will you please state to the Board your service in the improvement of the St. John's River and the adjacent locality, and the dates on which that service was rendered?

A. I was placed in charge of the Florida District in April or May of 1886, and remained in charge of that District until November of 1891.

(Colonel Gillespie) What was the character of the work that you did at the mouth of the St. John's River?

A. The construction of jetties, consisting of mattresses and stone.

Q. What was the character of the mattress that you used in that construction?

The Log Mattress 1886.

A. In 1886 the mattress was of the design which had been used by General Gillmore on all of the works. Two designs were called for, one of them consisting of a layer or raft of logs covered with brush. The second design I don't remember so clearly. It was more brush, but it was never used. That was used under the first contract made under me. I have some notes of that Colonel; if

I may get them, in the other room, I can remember probably.

Q. We just want the general design.

A. But it proved unsatisfactory.

Experimental Fascine Mattress 1886.

During the continuance of that contract I first tried two or three mats in the north jetty, consisting of a log raft alone, without any brush. That was also unsatisfactory, and by authority I obtained permission to construct a supplemental mattress of brush over fascines, made after the design of a contractor, Mr. R. G. Ross, and two of these were put in so that when the contract for 1888 was let, the fascine brush mattress was the only one called for.

Fascine Mattress Contract of 1888.

In 1888 this mattress consisted of a grillage of poles at the bottom, spiked together.

On that was a closely compacted layer of brush fascines, which were made so that the fascines should be continuous for the entire length of the mattress. The brush was laid in carefully so as to break joints and it was specially provided that there should be a sufficient quantity of brush so that when choked by the ordinary form of military choker and bound at intervals of two feet, there should be solid wood to the diameter of 9 inches at the points where bound. It was choked down at intervals of two feet until it was solid. On this layer of fascines was placed a second layer of fascines, spaced at intervals of 6 feet, and placed at right angles to the bottom layer. On top of this was placed another grillage of poles similar to the bottom grillage. The fascines of the lower layer were jammed together by heavy levers as they were placed laterally. When the top grillage was placed on, the ropes which had been attached to the corners of the lower grillage were drawn up through, hauled tight to the full breaking strength of the rope, by a lever and made fast to the intersections of the top grillage. The mattress was made on ways close to the shore.

Towed in Place Between Barges.

When ready for placing, which would depend upon the state of the weather and the stage of the tide, the mattress was launched as short a time as practicable before the time of placing in the jetty for the reason that the free flotation was so exceedingly small that the mattress had to be held up on the water by attaching it to barges on the sides, or by placing floats over it. It was then taken out, swung in place over the jetty and lowered away, being covered with stone as it was being lowered.

Sunk Separately.

Q. Was it the invariable custom to sink these mattresses separately and cover them with stone?

A. Invariably.

Estimated Cost.

Q. Do you remember what the cost of such a mattress per square yard was in place?

A. Yes, the cost of construction on shore was from 50 to 55 cents, the cost in place ranged in the neighborhood of 60 to 65 cents."

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Capt. O. M. Carter testified (Wyman Vol. 6), p. 54:

By Mr. Stone.

"Q. Were there any other contracts let by the Government engineers at or about that time for the purchase or for the manufacture of brush mattresses by the square yard?

A. Yes, sir.

Q. Who by?

A. The first brush mattresses made of brush fascines or logs ever purchased on the South Atlantic Coast were purchased under the contract of December 1, 1888, made by Captain Black, of the Engineers at Mayport, Florida, which is at the mouth of the St. John's River; the price was 74 cents per square yard.

Q. Was that mattress similar to the one you bought at Savannah?

A. It was similar to my second design mattress."

It is evident that Carter's answer was not intended as saying that the first fascine mattress used on the South Atlantic Coast was that put in by Black in 1888, for if he so intended he is contradicted by the record (*ante* pp. 250 to 254) and by his own admission (*ante* p. 254). His answer was intended to be responsive to the question, and means that the first fascine mattress paid for *by the square yard*, was that put in by Black in 1888.

But as we have already seen, Black's mattress was used solely as a single foundation course for a stone jetty, the mattresses were made, towed out, and sunk, one at a time.

Carter fails to cite a single instance where a jetty built up solid of brush fascines, or fascine mattresses, was constructed by paying for the brush mattresses otherwise than for the fascines in them by the cubic yard while the records of his own office prior to 1891 show that such brush jetties were always paid for by the fascines put in them by the cubic yard whether put in singly or in mats (*ante* p. 250).

Reason for Payment by Square Yard.

The very use to which Black's fascine mattress was put, —a single foundation course,—the necessity of putting them in one at a time, with no other mattress to be superimposed on it, made it proper to pay for it by the square yard as log mattresses had been paid for, because they too could only be constructed and handled separately.

That first contract (of 1888) was awarded to R. G. Ross at 74 cents per square yard. Vol 26 p 1325

R. G. Ross Bid 60 Cents a Square Yard in 1890.

On the next contract at the same place, R. G. Ross bid 60 cents per square yard for the same kind of mattress, but the contract was awarded to Marcus Conant (See Defendant's

Court Martial Exhibit 24, p. 11), who bid 70 cents per square yard for mattresses, but who was the lowest bidder on the much larger quantites of stone which had to be put in under the contract.

Black stated (Board Record Vol. 2), p. 488, that Marcus Conant failed in that contract. But his failure could not have been due to having bid too low on mattresses, because there was only 3600 square yards of mattresses provided for in that contract (See Defendant's Court Martial Exhibit 24, p. 11, table 7), while there were 46,000 tons of stone provided for at prices ranging from $2.07 to $2.57 per ton.

Carter further testified (Wyman Vol. 6), p. 54:

"Q. What is the next contract for the purchase of mattresses by the square yard that you know of down in that country?

A. The next proposals for brush fascine mattresses were received by Captain Bixby at Winyaw Bay in July, 1889.

Q. How much did he pay for them?

A. They were to be 57 cents, but the contractor failed."

But *Col. Bixby* testified on cross-examination (Wyman Vol. 8), pp. 4143-4-5, that J. S. Howell, who got that contract, never got far enough along with his work to sink any mattresses at all; that he failed to successfully drive the sheet piling which was a part of that project within the time limited, and his contract was canceled although Howell begged to be allowed to go on, stating he was financially able to do the work, but had encountered oyster beds which made driving piles difficult.

It was therefore not the price 57 cents per square yard for mattresses put in singly which made Howell a failing contractor in the sense in which "failing" is used by the engineers. As we shall presently see, the Christie, Lowe and Heyworth contract of 1900 for Cumberland Sound, was let with single course brush mattresses to be put in singly at 70 cents per square yard. (*Post*, p. 449.)

Colonel W. H. Bixby, witness for defense, testified under cross-examination (Wyman Vol. 8), p. 4273:

"Q. Now, coming to the question I put to you, your contract of Aug. 28, 1889, at Winyaw Bay, Clause 1 provided for a stone dike on brush mattress foundations, 3000 to 4000 feet of length for that dike, that is right, isn't it, Clause 1?

A. Taking it out of the specifications, three to four thousand feet of stone dike is to be built.

Q. On brush mattress foundation?

A. Yes.

Q. And Clause 5, second heading, the mattress is described as a mattress of about 10 inches thickness of brush, weighted down with about 18 inches thickness of stone ballast and extending 15 feet beyond the foot of the prescribed side slopes of the stone superstructure. That is right, isn't it?

A. Yes.

Q. And provides there for a stone superstructure rising to 6 feet above low water, the stone ballast to extend as far as the mattress; that is right isn't it?

A. It does not say how far the stone shall go.

Q. The mattress extending 15 feet beyond the foot of the prescribed slopes of the stone superstructure, and the mattress to be loaded with stone?

A. The stone ballast to extend as far as the mattresses.

Q. That is there isn't it?

A. Yes, that is in there.

Q. Then you are to have this superstructure of stone rising 6 feet above low water, built on that foundation?

A. Yes.

Q. Now, Colonel, suppose that you had come to the conclusion under your contract there, that it would be better engineering to build up that stone dike not with the foundation course of mattresses as you built it there, but to keep building mattress on top of mattress 8 feet or 16 feet high, could you do it under those specifications without you modified the contract?

A. I do not understand that I could under these specifications."

"Q. I am not trying to ask you what other officers think, I want to ask you what you say about it yourself, in your opinion, would you call that a detail merely, a change that you could make, making 16 courses of mattresses?

A. I would not think it was a detail. I should think it was something important.

Q. And, therefore, you would have in your opinion, if you wanted to make that change, you would have to have it done properly by submitting a supplemental contract to be approved by the Chief of Engineers, would you not, or the Secretary of War?

A. I should certainly go to the Chief of Engineers and ask him in this particular case and in other cases which would be just like this, I would."

CUMBERLAND SOUND PROJECT OF 1895.

FOUNDATION OF SINGLE COURSE MATTRESS.

Captain W. M. Black, a member of the Board of Officers, which made the project of 1895 for Cumberland Sound, testified (Court Martial Vol. II), pp. 2286-2287:

"Q. Was the question of jetties with a 'hearting of brush mattresses' discussed by the Board?

A. Yes, sir, in a measure it was; the Board decided they would not have that, as a result of the previous experience of our members, and other officers of the Corps, of which we were cognizant.

Q. The question was submitted to the Board for its consideration of using a hearting of mattresses?

A. Hardly seriously; that is, the members of the Board seemed to be practically unanimous on that. There seemed to be but little difference of opinion; it was simply mentioned or spoken of and there was a unanimity of opinion that it should not be done.

Q. Entirely unanimous, every member of the Board?

A. Yes, sir, entirely so, with the exception that I have

spoken of, the officer in charge of Cumberland Sound, saying perhaps in one or two places, where the movement of sand was great, it might be advisable to make a foundation of two or three thicknesses of the thin mattress; two or three layers of the thin mattress.

Q. And the question of the hearting of the jetty with rock, as reported, was discussed, and finally passed upon?

A. Yes, sir.

Q. And was adopted by the Board, as set forth in its report?

A. Adopted unanimously, as set forth in its report."

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Page 2286:

"The Board, after consideration, determined there should be but one thickness to be used."

Captain F. V. Abbott, another member of that Board of Engineers, testified (Court Martial Vol. 11), p. 2334:

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"Yes, sir; the question of a hearting of mattresses had very little discussion. It was not talked about much, as I remember, but the insertion of that clause 'a hearting of small stone' settled to my mind what the intention of the members of the Board was on that point, and I signed the report."

See also (*ante,* p. 282).

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Geo. Y. Wisner, for defense, testified (Court Martial Vol. 11), p. 2402:

"Q. Having that project of expenditure before you, and having reference to the concluding paragraph thereof, if you were the engineer in charge of that work, and having before you the report of the Board of Engineers dated December 18, 1895 (Cumberland Sound Project of Improvement), would you naturally from their construction, use a hearting of brush mattresses?

A. No, sir.

Q. Why not?

A. Because it is distinctly stated in the recommendation of the Board that it shall be a brush mattress foundation with a hearting—I do not remember the exact language—but equivalent to a hearting of small stone covered with larger ones."

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Wisner further testified (Court Martial Vol. 11), pp. 2402-

3: That the use by Carter in his letter of June 22, 1896, characterizing the Project of Improvement of 1895 for Cumberland Sound as

> "The construction of two jetties of stone with a *mattress hearting* wherever admissible, resting upon a foundation mattress of brush, starting from the shores,"

as language properly used as descriptive of that part of the jetty which had been built up prior to 1896, the "old work" but not properly descriptive of the "new work," which was to be built up with a "hearting of stone."

BRUSH STRUCTURE NOT SUITABLE FOR SALT WATER.

THE TEREDO.

In the letter written by *A. S. Cooper*, Assistant Engineer, to Carter *March 10, 1897*, (Shields Vol. 1), p. 529 relative to the necessity of putting more rock on the mattresses at Tybee Breakwater, this language occurs:

> "I would recommend that the present mat work be either stopped or slackened up, and what is already laid be covered over with sufficient rocks *to prevent the worms from destroying it.*"

Cooper testified (Shields Vol. 1), p. 530:

> "Q. To what were you referring when you alluded to the worms in that letter?
>
> A. In that locality the marine worms or Teredos are very bad and destroy a pile, or any wooden structure left in the water, inside of two years.
>
> Q. Is that in salt water?
>
> A. In salt water, yes, sir. These brush were on account of not having sufficient stone on the dam, exposed to the action of the Teredo and undoubtedly are now (1900) destroyed entirely."

Captain W. M. Black, who had charge of the Florida District, and waters adjacent to Cumberland Sound, stated to the Board of Officers (Board Record Vol. 2), p. 665:

> "In waters in the South it has been my experience,

that to keep any brush over a year and a half, it had to be so close to the bottom that it would certainly sand up within six months.

For that reason, I would use no brush beyond the limit of that sanding up, and that limit so far as I could find out, was within 18 inches of the bottom of the water, the ocean bottom."

J. H. Bacon, Assistant Engineer in the Florida District, and later Assistant Engineer on the Cumberland Sound work under Capt. Gillette, thus describes the Teredo (Hewlett Vol. 1), p. 42: Vol 9 P4393

The Marine Worm.

"The Teredo is a worm that digs in wood in the salt water along the South Atlantic and Gulf Coast and on the Pacific Coast; it digs into the wood, except palmetto; that is the only wood I know of it will not destroy, it enters the wood through a very fine hole, about the size of a needle point, and after entering it, it immediately begins to gnaw the wood and grows in size and life; it obtains its sustenance through the holes which it enters; that particular worm always stays in that place; it grows in length and size as it gnaws the wood; of course a great many of these worms entering the same piece of wood in the course of time it becomes entirely riddled with them; they cease to operate during cold winter months, but in the summer or warm months, in the vicinity of Cumberland Sound, they are in operation from about May 1st to the latter part of October.

Destructiveness.

Q. What degree of destructiveness have they?

A. They will entirely destroy the strength of any wood, except the Palmetto; they will make it so weak that if a piece is lifted up, suspended in the middle, it will break of its own weight—that is—in the course of time; and it renders wood absolutely worthless for any use.

Mr. Stone. Q. For what length of time?

A. It depends on the size of the wood and the piece; a short thin piece would be destroyed in a few months.

Mr. Erwin. Q. Take such material as fascines in mattresses, where the fascines consisted of brush two or three inches in diameter at the big end and tapering down to small limbs, fascines made up in that way; how long would, in the ordinary couse, it take to destroy it?

A. I should have said of course, if it had free access to the wood: if the wood is covered with sand it ceases to operate. If it has free access the wood would be destroyed in a few months.

Q. If it was covered it would depend upon the degree of covering?

A. Yes."

CARTER KNEW BRUSH MATTRESS JETTY NOT SUITABLE FOR CUMBERLAND SOUND.

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Complainant's Exhibit 644 (Wyman Vol 9), p. 4643, is a letter from Carter to the Chief of Engineers dated May 22, 1888, in which he says:

Carter's Letter of May 22, 1888.

"Under certain circumstances I think a small amount of log and brush mattress work, properly constructed, could be used as far up as the sand will follow and I estimated for a small amount of this in my Savannah project, more as a basis of cost than as recommending its use, as I do not think it should be used at all when it can be helped and in some localities not under any circumstances. *At Fernandina it cannot be safely used above the foundation course.*"

This letter written long prior to 1896, shows that Carter fully knew of the fact that a jetty built of a foundation of brush mattresses with a hearting of brush mattresses, was wholly unsuitable at Cumberland Sound, the entrance to Fernandina.

THE BRUSH JETTY BUILT BY CARTER.

We have already referred to the evidence (*ante*, p. 281) showing that the Board of Engineers who with Carter made the project of 1895 for improvement of Cumberland Sound, prescribed only a foundation course of mattresses. That under that project the jetty was to have upon that mattress layer a "hearting of stone," capped with heavier stone.

That Carter changed this project in its execution so as to build a jetty as he described it (*ante*, p. 283), "with a mattress hearting wherever admissible."

We have already referred to the evidence (*ante*, p. 283) showing that in the execution of the work Carter built up the mattresses 16 courses high at Cumberland Sound under the 1896 contract.

We have already referred to the evidence (*ante*, p. 283) showing that although he had specified for canvassing bids only 200,000 square yards of mattresses, Carter had ordered put in to the Cumberland Sound work prior to his leaving the district, 543,307.61 square yards, and (*ante*, p. 310) there had actually been put in under his orders up to July 31, 1897, 446,102.41 square yards of mattresses.

It is seen therefore, that Carter deliberately constructed a great flimsy brush jetty reaching out into the sea, knowing its uselessness.

We have already referred to the evidence (*ante*, p. 235) showing that when Carter found his brush jetty was not accomplishing the object of the project, he undertook to put $500,000 of the fund appropriated into dredging by the Supplemental Contract of March 17, 1897 (with forged signatures thereto) but still hanging on to the $1,500,000 of the appropriation, for use in his brush work, which he continued up to the time he left the District in July, 1897.

CHRISTIE, LOWE & HEYWORTH CONTRACT OF 1900.

CUMBERLAND SOUND STONE JETTY.

When Carter left Savannah in 1897, the Cumberland Sound territory was transferred (Hewlett Vol. 1), p. 23, to Captain McKinstry, then in charge of the Florida District.

After certain surveys, soundings and plats had been made on the lines of the old jetties and the project approved, to which reference will be made, specifications were drafted by Captain McKinstry, and the contract advertised January 16, 1900, and awarded to Christie, Lowe & Heyworth.

Before the contract was actually signed, however, the Cumberland Sound territory was transferred back to the Savannah District, May 24, 1900, and the contract was signed by Captain C. E. Gillette on June 25, 1900. (Hewlett Vol. 1) p. 30.

The Specifications.

The original specifications drafted by Captain McKinstry, for the Christie, Lowe & Heyworth contract of June 26, 1900, is in evidence as Exhibit 13 (Hewlett).

In Clause 41, of the specifications it is stated:

> "The work to be done under this contract will consist in furnishing and placing in the jetties, at Cumberland Sound, certain stone, and if necessary, certain brush mattresses."

Foundation Mattress.

> "Brush mattresses, likewise described below, shall also be used, either *as foundation* or apron mattresses, if in the judgment of the Engineer in Charge they should at any time be necessary or desirable."

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In Clause 42, of the specifications, the following quantities are stated for canvassing bids:

1st class stone (size ranging from 2 to 8 tons), 185,000 tons.

2nd class stone(size ranging from 20 to 400 pounds), 220,000 tons.

3rd class stone (size ranging from 10 to 200 pounds), 111,000 tons.

Mattresses, 30,000 square yards.

May Use No Mattresses.

"As to mattresses, the quantity to be furnished will depend as above stated, on the exigencies of the work any quantity between none and 36,000 square yards may be required."

The Mattress Prescribed.

The mattress prescribed is practically Carter's Third Design, but with the specific provision that:

"The fascines will be made by placing the *brush*, which must be reasonably straight in suitable racks *so as to break joints*, and make *a continuous* fascine extending completely across the mattress."

Mattresses to Be Put in Singly.

"The mattresses will be laid in juxtaposition or with such lap as may be required. They will not be accepted until properly placed in the work and secured by stone ballast, uniformly distributed over the mattresses to a depth of from 1 to 2 feet, as may be directed."

Prices.

The prices as let in the contract were:

1st class stone $2.15 per ton.

2nd class stone $2.15 per ton.

3rd class stone $1.90 per ton.

The Price Per Square Yard for Mattresses.

The price for the mattresses fixed in this contract was 70 cents per square yard, for such mattresses put in singly, as against $1.10 cents per square yard for a layer of brush in the multiple mats put in by Carter at the identical same place in 1896.

No Mattresses Put Into the Work However.

Mr. Bacon testified, however, that it was found unnecessary to use any mattresses and none were used in the work. (Hewlett Vol. 1) p. 40. The purpose of the mattresses in preventing scour was subserved by laying a thin course of small stone ahead of the stone jetty work as it progressed (*ante*, p. 433).

Work Contemplated.

Clause 41 of the specifications, provided for raising: The North Jetty to the low-water level from the shore to station 11,000 and to the high-water level from station 11,000 to station 20,412.

The South Jetty to 3 feet above the low-water level from the shore to station 5,000, and from station 8,000 to station 12,000; and filled in to same height, from station 5,000 to 8,000, and from station 12,000 to 13,850, to be built to same height if deemed desirable by the Engineer in Charge.

Contract Modified May 20, 1901.

This contract was modified by supplemental contract dated May 20, 1901, approved by the Secretary of War (Hewlett Exhibit 13-B). The main features of which fixed the sizes of stone as follows:

1st class stone—$\frac{1}{2}$ ton to 20 tons.

2nd class stone—20 pounds to 1,000 pounds.
3rd class stone—10 pounds to 200 pounds.

Also providing that all stone placed above a plane 5 feet below mean low water will be first-class stone. Stone below that plane will be second and third class stone, used indiscriminately.

Contract Modified May 5, 1902.

This contract was modified by Supplemental Contract dated May 5, 1902, approved by the Secretary of War (Hewlett Exhibit 13-C), providing for raising the North Jetty to high water level, and raising the South Jetty to high water from the shore to such point as may be determined by the Engineer in Charge.

Under this contract, two great stone granite jetties were built at Cumberland Sound by Mr. J. H. Bacon, Assistant Engineer, under Captain Gillette, at a cheaper cost to the Government per cubic yard of jetty put in than was the cost per cubic yard of Carter's brush jetty as put in before any shrinkage of the brush had taken place (*post*, p. 457).

JAS. H. BACON'S TESTIMONY.

CONDITION OF CUMBERLAND SOUND WORK.

When Carter left Savannah in 1897, the Cumberland Sound work was transferred (Hewlett Vol. 1), p. 23, to Captain McKinstry, then in charge of the Florida District.

Mr. J. H. Bacon, a civil engineer and graduate of Harvard College, had been Assistant Engineer in the Florida District for several years. (Hewlett Vol. 1) p. 22.

Bacon's Survey and Soundings, 1898.

Bacon was detailed in 1898 by Capt. McKinstry to make a survey of the Cumberland Sound jetties as they then were and made a survey and sounding on the jetties in March, April and June, 1898, and made a plat of it within less than a year from the time Carter's work had been ended. (Hewlett, p. 23.) The plat is marked (Exhibit 11, Hewlett). Upon this survey a project was made by a Board of Officers, for building a great stone jetty on the line of Carter's brush jetty, or upon what then remained of it.

Captain McKinstry advertised the contract January 16, 1900, and the contract was awarded to Christie, Lowe & Heyworth, contractors. Before the contract was actually signed, however, the Cumberland Sound territory was transferred back to the Savannah District May 24, 1900, and the contract was signed by Capt. C. E. Gillette on June 25, 1900. (Hewlett Vol. 1) p. 30. See as to the particulars of this contract (*ante*, p. 447).

Geiseler's Survey, Soundings and Chart, 1897.

E. A. Geiseler, Assistant Engineer under Carter and under Capt Gillette also made a survey and soundings on the Cumberland Sound jetties in October and November, 1897, within four months after July, 1897, when work had ceased under Carter and made a plat of it, which is in evidence as Exhibits 10 A. B. (Hewlett. And see Geiseler's testimony (Court Martial Vol. 2), p. 406.

Bacon Survey and Soundings, November, 1900, and January, 1901.

Mr. J. H. Bacon, Engineer, preparatory to commencing work under the Christie, Lowe & Heyworth contract, in November, 1900, made (Hewlett Vol. 1), pp. 38-39, another survey and took the soundings on the North Jetty of Cumberland Sound, and made a plat of it which is in evidence, marked Exhibit A, B, C (Hewlett). And in January and February, 1901, he made (Hewlett Vol. 1), pp. 54 and 79, similar survey and soundings on the South Jetty, and made a plat of the same, which is in evidence as Exhibit 16, Hewlett.

BACON'S PROFILE CHARTS.

NORTH JETTY.

Mr. J. H. Bacon, Assistant Engineer, from a careful examination of the original office records and charts kept under Carter at Cumberland Sound, which records and charts were produced and fully proved before Commissioner Hewlett (See list of Exhibits in index to Hewlett record, and pages of record in which they are identified), made profile plat (Exhibit 14, Hewlett) of a large portion of the North Jetty (Hewlett Vol. 1), pp. 35-36 *et seq.*, showing:

(1) The original line of the ocean bottom before Carter

put in any material on the jetty (indicated by the line A-B-B on plat);

(2) The height to which all of Carter's material put in on the jetty would have raised the jetty, taking the mattresses as they were measured on the barge (indicated by the line H-G on the plat);

(3) The height to which all of Carter's material put in on the jetty actually raised the jetty as given by the measurement taken just after the mattresses were sunk loaded with rock (indicated by the line E-F on the plat);

(4) The height of the remains of the Carter jetty as found by soundings taken by Bacon in his survey made in November, 1900, prior to commencing work under the Christie, Lowe & Heyworth contract (indicated by line C-D-D);

(5) The space colored light blue and marked "Gain" indicating all that was left of Carter's jetty in November, 1900. And the space marked "Loss" indicating where the jetty had completely disappeared and the bottom of the ocean was there deeper than it originally had been.

(6) The chart also shows the height, by the line K-K-K (high water level) to which the great stone jetty built on top of the remains of Carter's old jetty had been raised under the Christie, Lowe & Heyworth contract, up to the time, Feb. 28, 1902, when Bacon's plat was made.

At the time Bacon testified before the Commissioner, March 1, 1903, the stone jetty had been built up so as to fill up the entire space indicated by the sharp points K K K (Hewlett Vol. 1), p. 61. Built up to high water for the entire length (Hewlett Vol. 1), p. 45.

SOUTH JETTY.

Mr. Bacon also from similar data, made a profile plat (Exhibit 16, Hewlett) of a large portion of the South Jetty of Cumberland Sound (Hewlett Vol. 1), p. 53 *et seq.*

(1) The original ocean bottom (indicated by the line A-B on plat);

(2) The height to which all of Carter's material put on the jetty would have raised the jetty, taking the mattresses as they were measured on the barge (indicated by the line H-G on plat);

(3) The height to which all of Carter's material put in on the jetty actually raised the jetty as given by the measurements taken just after the mattresses were sunk loaded with rock (indicated by the line E-F on plat);

(4) The height of the remains of the Carter jetty as found by soundings taken by Bacon in his survey made in January, 1901, prior to commencing work under the Christie, Lowe & Heyworth contract (indicated by the line C-D);

(5) "Gain" and "Loss" indicating the same thing as was explained for North Jetty.

Remarkable Features Shown by Profile Charts.

SOUTH JETTY.

Referring now to Exhibit 16 (Hewlett), the Profile Chart of the South Jetty extending 3,800 feet between stations 10,000 and 13,800 it shows:

(1) That the mattresses sunk on an average one-third of their height, on being sunk with the light load of stone put on them (See also *ante*, p. 414);

(2) That from 11,100 to 13,800, some 2,700 feet, the entire jetty had disappeared by January, 1900, and the ocean bed was deeper than it had been before Carter commenced to build any jetty there;

(3) That for about 1,000 feet some remains of Carter's jetty was left but less than a third of the original mattress height.

NORTH JETTY.

The showing on the North Jetty was equally bad.

(1) The mattresses sunk from 1/3 to 1/2 on being sunk.

(2) For 800 feet the jetty was entirely gone, and the ocean bottom deeper than before Carter commenced on it.

(3) For 700 feet additional there was scarcely any remains at all.

(4) For 3,200 feet less than 1/3 of the original mattress height remained.

Cross-Section Plats of Jetties.

Mr. Bacon has also made and proved certain cross-section plats of the same jetties which further illustrates the condition of Carter's work. They are in evidence as Exhibits 17-A-B-C-D-E-F and 18-A-B-C-D, Hewlett.

TABLE OF COMPARATIVE COST

Mr. Bacon has also compiled from the original records referred to, a table of the comparative cost to the Government of the material put in by Carter, over the same portions of the North and South Jetties covered by his profile Exhibit 14 and 16, which table is on Exhibit 14 (Hewlett). He explains how these computations are made (Hewlett, p. 46 *et seq.*).

From this table we will take simply the data for the 1896 Greene & Gaynor contract, North Jetty to illustrate.

North Jetty Station 15,565 to Station 20,412.

Total cost (amount claimed by contractor).....	$274.407.77
Original Volume put in if no settlement had taken place—cubic yards	65,400
Cost per cubic yard.....	$4.20
Volume of stone placed—cubic yards..... or 22% of original volume.	14,235

Volume remaining from soundings of E. A. Geiseler November, 1897, cubic yards..... or 27% of original volume.	17,500
Cost to the Government of what then remained, per cubic yard.....	$15.68
Volume remaining from soundings of J. H. Bacon, November, 1900, cubic yards..... or 11% of original volume.	7,400
Cost to the Government of what then remained. per cubic yard	$37.08

RELATIVE COST OF STONE AND BRUSH.

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J. H. Bacon testified (Hewlett Vol. 1), p. 74:

That the price of labor in 1896 was about the same as it was in 1900; that the price of everything necessary for machinery, all iron work was higher in 1900 than it was in 1896. Freight was about the same in 1900 as 1896.

That the same rock quarries from which Christie, Lowe & Heyworth got their stone, near Columbia, S. C., existed in 1896 as they did in 1900, besides others he mentions. That he knew of no reason why stone should cost more in 1900 than in 1896.

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Bacon testified (Hewlett Vol. 1), pp. 59-60, that by taking the actual weight of a number of carloads of stone under the Christie, Lowe & Heyworth contract, and actual measurement of space filled by the rock in the jetty, he determined the average space in the jetty filled by a ton of stone under that contract, and therefore, the cost to the Government of a cubic yard of stone jetty to each ton of stone of the three classes put in under that contract.

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He testifies (p. 59) that:

One cubic yard of 3rd class stone weighed 9/10 of a ton.

The 1st and 2nd class heavy granite blocks, of course, weighed more to the cubic yard.

He testified (p. 139) that 1422 cubic yards of the 1st and 3rd class stone weighed 1920 tons which gives by division, 1 cubic yard 1st and 2nd class stone weighed 1.35 tons.

(The stenographer has it 3/10 tons (at page 139), but the above figures given by Mr. Bacon shows that it was 1 cubic yard equals 1-3/10.)

This therefore gives us:

COST OF CUBIC YARD OF STONE IN JETTY.

Christie, Lowe & Heyworth Contract.

1 cubic yard, 3rd class or Florida stone cost.....$1.71
1 cubic yard of 1st or 2nd class stone cost..... 2.15

COST OF CUBIC YARD OF BRUSH JETTY.

Greene & Gaynor Contract.

1 cubic yard of Carter's brush mattress including stone on it as measured on barge before sinking cost.....$4.20

As the evidence showed that it shrunk to 2/3 its volume on sinking, it gives

1 cubic yard of Carter's jetty just after being put in cost $6.30

BACON'S COMPARISON BY CROSS-SECTION PLAT.

Mr. Bacon has made a cross-section plat (Exhibit 17-A, Hewlett) at Station 18,500 on the North Jetty, showing (Hewlett Vol. 1), p. 64, what section of the Jetty had been built in stone, under the Christie, Lowe & Heyworth contract, what part had originally been built up by Carter, mainly with brush, and the size of the stone jetty which could have been built up if the whole amount spent on the jetty had been built

in stone under the Christie, Lowe & Heyworth contract. The utter waste of money in Carter's brush jetty is by this plat forcibly presented to the eye.

CARTER'S BRUSH FOUNDATION ONLY PARTIALLY BUILT ON.

Bacon testified, and his plat of the actual soundings shows (*ante*, p. 454) that a very large part of Carter's jetty had entirely disappeared before work commenced on the Christie, Lowe & Heyworth contract.

Besides this, Bacon referring to the South Jetty, testified (Hewlett Vol. 1), p. 71:

"Q. What portion of it in length departed entirely from the original axis or line of the jetty built by Capt. Carter?

A. From 1,000 to 1,500 feet in length.

Q. That is, there was a portion then of the jetty in length anywhere from 1,000 to 1,500 feet that was built entirely off the old jetty?

A. Yes, sir.

(Mr. Stone.) Q. What was the total length of that jetty?

A. Probably 11,000 feet.

(Mr. Erwin.) Q. Now in building that portion of the jetty, did you have to lay any foundations, or mattresses or anything of that sort, or you went on building like you would build on part of jetty where you followed an old line?

A. Built in same way as jetty was built on old work.

Q. Did it take any more material for foundation than under old work?

A. No; no more material.

Q. Was there any more sinking there or settlement than there was in other portions of the work?

A. No; no more.

Q. Take the portion of the South Jetty where you built up across the old ship channel, there was a gap of how much at the ship channel?

A. There was a gap of about 100 feet wide at the bottom.

Q. Was there any remnants of the old jetty in there at all, the old ship channel?

A. No, this gap had scoured out to a depth of 25 feet, which was fairly below the original bottom line.

Q. There was no difference then, in the stability of the bottom so far as supporting the jetty work where you did not follow the old line of the jetty and where you did?

A. No difference at all."

NO TRESTLE REQUIRED.

Mr. Bacon testified in regard to the great stone jetty constructed by Christie, Lowe & Heyworth (Hewlett Vol. 1), p. 33:

"Q. Now in putting in that stone what method did the contractors adopt to place the stone in the jetties?

A. They brought the stone to the wharf and unloaded it from the cars and transferred it from the wharf to large lighters, and the lighters are towed out to the side of the jetty; the stone is placed either by hand or by machinery in the proper place; wherever they have contracted to place it, it is so placed.

Q. Placed accurately in position?

A. It is placed accurately in position.

Q. Do they have to build any tramways out on the jetty from the shore and carry out the rock on the tramway to get it on the jetty, or anything of that sort?

A. They do not."

Page 35:

"That a small tramway was built on the shore end of the North Jetty at Cumberland for wheelbarrows to enable them to get rock to low water line; this tramway cost possibly $150."

In this connection see Carter's statements to Venable (*ante*, p. 216), to Hancock (*ante*, p. 222) and to Rutherford (*ante*, p. 229) prior to the letting of the contract of 1896, as to the immense cost of trestle work and plant required to build the jetty.

COST OF PLANT FOR CUMBERLAND SOUND WORK.

The Cumberland Sound project contemplated $2,350,000 worth of work (*ante*, p. 168).

J. H. Bacon estimated (Hewlett), p. 33, the cost of a complete plant for that work at from $50,000 to $75,000.

George X. Wisner, for the defense, estimated it (Court Martial Vol. 11), p. 2405, at $60,000, and said there would have to be a trestle built to get the material in place costing $175,000 to $200,000.

The cost of the Greene & Gaynor plant for the big 1892 contract at Savannah, although not a new one, was valued by themselves organizing the Atlantic Contracting Company (Shields Vol. 1), p. 831, at $26,932.50.

DEPTH OF CHANNEL BETWEEN JETTIES AS CARTER LEFT IT.

Bacon testified (Hewlett), p. 25, that at the time he made his first survey of Cumberland Sound in March, April and June, 1898, there was no access for ships going into Cumberland and Fernandina, between the two jetties, that the depth indicated on the map (Hewlett Exhibit 11) showed about six feet of water between the jetties (p. 20):

> "Q. When you state that the least depth between these two jetties at that time was six feet, at mean low water, what do you mean by that?
>
> A. I mean a ship would have to draw less than six feet to enter in between the jetties.
>
> Q. It might have been deeper in some places?
>
> A. That was the least available depth."

Ships Passed to Sea Across the South Jetty.

Vol. 9 P 4377-8

Bacon further testified (Hewlett Vol. 1), pp. 25-26:

That ships then got into and out of Fernandina by a channel which cut right across the South Jetty, and passed out to sea by a course south of the South Jetty, and that the available depth in the channel then used was only 15 feet at low water. See also J. G. McGiffen for defense, testifying in 1900 (Shields Vol. 3), p. 2083.

Vol. 28 P 12491

New Channel Depth, December, 1902.

Vol 9 P 4380 and 4323-4

Bacon further testified (Hewlett Vol. 1), pp. 28 and 72, that under the Christie, Lowe & Heyworth contract, the South Jetty was built up in stone on both sides of the ship channel which crossed it, to five feet mean low water, before it was closed and the gap filled in. But that the effect of the jetties were found in the new channel between the jetties long before the break in the South Jetty by the old ship channel was closed.

Vol 9 P 4323-4

(Page 73): That the old ship channel was not closed until the depth was obtained in the new channel between the jetties.

Vol 9 P 4468

(Page 120): That there was also some dredging done in the new channel between the jetties. The channel was widened to 200 feet and deepened along its entire length next to the North Jetty.

Vol 9 P 4380 and 4397

(Pages 28 and 45): That the available depth in the new channel between the jetties was in December, 1902, for ships passing into the inner sound 21 feet, at mean low water, and the available depth across the outer bar proper was 25 feet at mean low water.

The project under which this work was done called for only 19 feet at mean low water.

Stone Jetty Has Not Settled Appreciably.

Mr. Bacon testified (Hewlett), p. 46:

That between the time the stone jetties were put in under the contract of June 26, 1900, up to the time of his testimony in March, 1903, the stone jetty had been carried to high water mark, and that the settlement was probably not more than 2 per cent., or a surface settlement of half a foot to a foot and a half.

DEFENDANT'S PROFILE PLAT.

CUMBERLAND SOUND JETTY, 1896.

The defendant endeavored before the Court Martial to prove good work at Cumberland Sound by introducing two profile plats of a portion of the Cumberland Sound jetties drafted from soundings made in December, 1897, or January, 1898, by a party composed of Geo. Y. Wisner, expert engineer for the defense, A. E. Kastl, expert engineer for defense, and H. C. Ripley, another expert witness for the defense, before the Court Martial, but the last named being not included in the list of defendant's witnesses in the present proceedings.

Geo. Y. Wisner testified (Shields Vol. 3), pp. 1689-90-91:

That after his employment as an expert by Carter in December, 1897, or January, 1898, he and Mr. H. C. Ripley and A. E. Kastl visited Cumberland and that they took Mr. E. H. Gaynor (one of the parties charged with conspiracy) along to point out the place where the work had been done.

(Page 1691): Was not sure they ever had a map along.

(Page 1690-1-2): That they simply made several soundings across the jetty, then a portion of a line run lengthwise the jetty, the object being simply to find the height of the top of the jetty, that is, how much jetty there was above the bottom of the sea. It was not a complete survey. The result would only show how high the jetty was at the places measured.

Vol 25 P 12101-2

(Pages 1693-4): He does not produce his measurements, but he testified that he compared them with certain reports of inspectors or certain tracings previously made by inspectors showing heights, he does not know which and he does not identify the tracings.

Vol 25 P 12102

(Page 1694): He did not get these papers whatever they were from the Engineer's office himself, could not say who brought them to him, whether it was Carter's lawyers or not.

The profile plats made are in evidence as (Defendant's Court Martial Exhibits 16 and 17) offered in evidence (Court Martial Vol. 11), p. 2470.

Vol 25 P 12257

Vol 25 P 12103

(Page 1695):

"Q. (By Mr. Rose.) How did the survey made by you, showing the height of the jetty from the original bottom, compare with the reports or memoranda furnished you from the Engineer's Office showing the height of the jetty when it was originally put in?

A. It was very little changed: very little difference between the two; practically the same."

WHAT DEFENDANT'S PROFILE SHOWS.

North Jetty Profile.

An examination of Defendant's Court Martial Exhibit 18, the Wisner Profile of the North Jetty, will show that according to that plat:

(1) That Carter's mattresses shrunk from one-half to a third in height on being sunk, from the heights as measured on the barge.

(2) That either Wisner got entirely off the line of the jetty or that between stations 20,000 and 20,270 the Carter's jetty was all gone.

(3) That the upper layers of the work between station 19,089 to 19,620, where, according to the plat, the work stood

up best, was all laid in August and September, 1897, after Carter had left the District, and consisted of mattresses put in under Captain Gillette.

South Jetty Profile.

(1) The profile for South Jetty also shows that the mattresses shrunk at least one-third on being sunk, from the barge measurements.

(2) It shows that between stations 13,510 and 13,700, the work had swelled up twice as high as the height it had after the mattresses were sunk. Indeed higher even than the original height of the mattresses on the barge. As this is manifestly preposterous, the conclusion is inevitable either that the data from Wisner and Kastl plotted the original work put in by Carter, or their own soundings and the plotting of the same was erroneous. Either view destroys the value of the testimony on this subject. Indeed, with E. H. Gaynor to point out the place where the work was done on a jetty under water, and with E. H. Gaynor carrying the lead line (Wisner, Court Martial Vol. 12), p. 2626, in making the soundings it is not surprising that the jetties in spite of the Teredo should have appeared swollen up bigger than when first put in.

DEFENDANT'S PROFILE PLAT.

SAVANNAH HARBOR, 1896.

Wisner, Kastl and Ripley, made similar soundings and a plat of Tybee Breakwater on January 6, 1898. The plat is in evidence as Defendant's Court Martial Exhibit 14, offered (Court Martial Vol. 11), p. 2462.

An examination of this profile will show that this jetty, according to that plat, was also affected with the same swelling

disease that affected the Cumberland Sound jetties in places, showing either inaccuracy from taking wrong measurements from the original records, or from errors in soundings made by the Wisner party.

THE HENRY L. MERINDIN SURVEY.

Indeed, the Government had soundings and plat made by Mr. Merindin, an officer of the Geodetic Survey (Court Martial Vol. 19), p. 4591, and his results are shown by their plat, Court Martial Exhibit 464, showing that Wisner's Profile was all wrong.

DEFENDANT'S EXHIBIT 24 COURT MARTIAL.

COMPARISON OF PRICE OF MATTRESSES IN OTHER DISTRICTS.

The defense, in order to meet the damaging results, shown by the evidence offered by the Government of the sudden increase in the cost to the Government of material on and after 1891, offered in evidence a compilation of Tables (Defendant's Court Martial Exhibit 24) made up from prices of mattresses taken from the reports of various officers in other districts, appearing in the published reports of the Chief of Engineers.

This compilation was made up (Court Martial Vol. 13), p. 2930-2931, by Mr. Richard A. Blandford, a civil engineer and county surveyor of Chatham County, Georgia.

Mr. Henry C. Ripley's name figures also in these tables as being responsible for some of the calculations in which some of the tables are based.

He was cross-examined on them before Commissioner Shields, and his testimony has not been offered by the defense in the present case, his name being left off the defense list.

The Tables.

From these tables compiled from the reports of the Chief of Engineers, Blandford, undertakes to make and obtain (Table pages 32 and 33 of Compilation), the average price *per square* yard for mattresses in contracts let at certain places in the Savannah district, from 1880 to 1897, and to compare in summary tables (compilation, pp. 35 and 36), such average prices with the average prices at certain other *selected* harbors on the Atlantic and Gulf coasts, for certain *selected* years. It is sought by these tables to make it appear that Carter's prices were not higher than at other places.

The comparisons made are worthless for the following reasons:

(1) The comparison is made of the cost of mattresses *by the square yard,* and not by the *cubic yard,* which is a comparison of the cost of one mattress *by surface measure* with another mattress by surface measure *without taking into consideration the thickness of material.*

It is as if you employed two agents, each at different places to dig a well, each well to have the same orifice, say 4 square yards. One agent digs his well 400 feet deep at a cost of $400. The other agent digs his well 100 feet deep at a cost of $400. Here each well costs $100 per square foot of surface.

But who would be so foolish as to argue that a comparison of the cost of the respective works should be by surface measure? One man has done four times the amount of digging that the other has, and removed four times the amount of material.

(2) The word "mattress" is a very broad term, meaning for the purposes of harbor improvements, certain character of constructions of "logs," or "logs and brush" or "brush" and "poles and brush" of the most diverse forms and sizes and corresponding variations in amount of material and cost.

To compare the cost of "mattresses" *by the square yard* under different contracts, without determining that the forms of construction and materials are practically the same, is like comparing the cost of two vessels by the cost per square yard of deck surface, without taking into consideration the fact, that one vessel is a wooden schooner and the other an iron steamer.

(3) The summary of the average cost per square yard of mattresses at various places from 1880 to 1897 (Compilation, p. 35), is worthless, because the average for Savannah harbor for instance is taken from his table, page 32, of compilation, and that is made up, as will be seen by reference to

it, by averaging in with the high prices prevailing under Carter on and after 1891, the low prices under Gilmore prior to 1891. It will be seen that to obtain the advantageous average price of 69 cents per square yard, at Savannah harbor, which he uses for comparison with the selected harbors of other districts, he averages in three Gilmore contracts at prices of 57, 47 and 38 cents, or average of 47 cents per square yard, with four of Carter's contracts at prices of 63, 85, 95 and 95, or average of 84 cents per square yard. These figures themselves, however, show that *even considered by surface* measure, Carter's prices nearly doubled Gilmore's.

(4) If we look behind the "surface" figures given in the tables, the worthless character of the comparisons there made, will be most forcibly brought out.

For instance in his "Table of accepted or Lowest Bids" Compilation, p. 32, he has for comparison.

Gilmore Contract, Savannah Harbor of 1884, being contract No. 2744 with J. F. Gaynor brought forward from his table 2, as a Gilmore mat design 2, at 47 cents, per square yard.

And Carter's contract Savannah Harbor of 1892, No. 4960 with Atlantic Contracting Company, brought forward from his table 6, as a Carter mat, 3d design, at 95 cents, per square yard.

And he not only leaves it here as if the two mattresses ought to be compared at the respective prices of 47 and 95 cents, per square yard, but he actually averages them together to get the general average from this table which he carries over into his summary table, Compilation, p. 35. And this although Gilmore's mattress was 18 inches thick exclusive of binding poles, and Carter's only 9 inches exclusive of binding poles, and although it had been demonstrated to Carter by correspondence and by contracts carried into execution, that it took two of Carter's 9 inch mats to equal in value one

of Gilmore's 18 inch mats (*ante*, p. 267). So that instead of comparing Gilmore's mat at 47 cents, per square yard, with Carter's at 95 cents per square yard, it ought to have been with Carter's mat at $1.90, per square yard.

It was claimed by counsel for the defense, in order to get away from the force of the comparison with this contract, that only a small amount of fascine mattresses were put in under the supplemental contract No. 3282 under Gilmore, only a small amount for the men to stand on in putting in the separate fascines when the water was deep (Shields Vol. 3), p. 2718. This is mere assertion of counsel wholly unsupported by the testimony, and in contradiction of the statement in General Gilmore's letter to Carter, where he states the place for the use and purpose of the fascine mattress, as follows: "After the jetty is leveled up a course of mattresses and stone 15 feet wide will be put on, and the mattress may be either that described in the contract, or a mattress 18 inches thick made of fascines, at the contractor's option and at the contract price." (Letter of April 21, 1885; *ante*, p. 269.)

Counsel for defense also tried to disprove the actual use of the fascine mats, under the supplemental contract No. 3282, by offering the reports of the Assistant Engineers under that contract, showing that they did not report for payment anything but so many cubic yards of fascines.

But, as under these contracts in which the price was by the cubic yard for fascines put in either singly or in mats, the fascines were always piled up and measured by the cubic yard on shore or on barge, and reported for payment by that measurement before making into mats (See Supplemental Contract No. 3282, and see Testimony of Ford, Shields Vol. 3), pp. 2570-1, it is evident that such reports of material for payment would not, of course, report the mats put in evidence as mats, but merely as so many cubic yards of fascines measured.

In the contract No. 4224, of November 5, 1890, the cost of the 9 inch fascine mattress was only 35 cents, per square yard, as we have seen (*ante*, p. 262). But Blandford does not bring the price of that mattress into his table at all.

His report also omits the prices for mats in the contracts let prior to 1891 (*ante*, p. 262), in which the Engineer had the option of calling for the mats at the price of fascines by the cubic yard.

He thus studiously avoids bringing into the tables any of the prices for fascines mattresses, either before or after 1891, which would make a disadvantageous comparison with Carter's 3d design fascine mattress.

TABLES INACCURATE.

(5) There is another feature of Blandford's compilation of prices which destroys their value as evidence. They are not accurate, nor are they fairly compiled.

A misleading feature of Blandford's compilation, which makes them worthless as evidence of prevailing prices, is the adoption of a table with the double heading: "Table of Accepted *or* Lowest Bids" (Compilation, p. 32), and the use which is made of it. As an example of this, reference is made to Table 12 (Compilation, p. 4) for Charleston Harbor. The lowest bidder for mattresses was Cronch & Cronch, at 75 cents, per square yard, for a mattress 18 inches thick.

The lowest bidders for the contract as a whole, however, were Eagan & Friday who got the contract, although their bid for mattresses was $1.25, per square yard. Capt. Abbott in his report says that the $1.25 price, was very high, but the work was on the outer bar, and there was not much of it, and the contract was awarded as a whole. Report, Chief of Engineers for 1893, p. 1497, put in evidence by the defense (Shields Vol. 3), p. 1950. Notwithstanding this, Blandford carries into his Table, p. 32 of compilation, as in-

dicative of the prevailing prices at Charleston, not the lowest bid 75 cents, but the $1.25 bid.

He does the same thing in case of the bids in Table 5, for Charleston Harbor, page 3 of Compilation, where the lowest bidder did not get the contract because a higher bidder on mattresses was the lowest bidder on the contract taken as a whole. He carries 69 cents instead of 64 cents the lowest price bid into this table, p. 32.

Second. Another gross error in Blandford's tables is a misdescription of the mattresses bid on, in notes under the tables of bids, describing them as being essentially the same as Carter's third design, when, in fact, they were mattresses 18 inches thick, exclusive of binding poles, made of brush in several layers. Also by repeating the same reference under numerous other tables, the error is multiplied and the Court is liable to be misled as to all of them, if it relies on the notes made by Blandford under his tables as describing the mattresses bid on. This, in such a compilation by an expert, shows gross carelessness operating always in favor of the defense.

As an example of this, reference is made to the following: Under Table 4 for Charleston Harbor (Blandford's Compilation, p. 4), in which the prices bid for the three designs of mattresses are stated to be, 1st Design 83 1/3, 2d Design 92, and 3d Design 82 cents, Blandford has made this note, as descriptive of the mattresses bid for:

> "Designs for mattress given on pp. 1044 and 1045, Report 1881. The 2d and 3d being virtually the same as Capt. Carter's 1st and 3d."

This note would lead the Court to believe that here was a contract bid on in Charleston in 1881, at 82 cents, per square yard, of the same kind as Carter's 3d design, which was let for 95 cents at Savannah.

Colonel Bixby, witness for the defense, testified (Wyman

Vol. 8), pp. 4209-4210, that Drawing Exhibit 332 (Shields) fairly represented the 3rd Design Charleston mattress described at page 1045 of the Chief of Engineers Reports, it being a mattress 18 inches thick, composed of three layers of brush each 6 inches in the finished work. He further testified (Wyman Vol. 8), pp. 4224-5, that Drawing Exhibit 331 (Shields) fairly represents a two-course Carter multiple mat. He further testified (Wyman Vol. 8), p. 4226, that he would not expect any difference between the cost of the one Charleston mat 18 inches thick, and the two-course Carter multiple mat made of fascines 9 inches at the choke.

Carter himself on cross-examination (Wyman Vol. 9), p. 4301, admits that the statement was a mistake.

There is no point to the excuse offered that the bids on that contract letting were rejected, because by referring to the same mattress description by the same pages of the Chief of Engineer's Report, "1881, pp. 1044 and 1045," under the subsequent tables, and following his note under Table 4, that the mattress described in Report for 1881, pp. 1044 and 1045, was essentially the same as Carter's 3rd design, he has carried this error into the following Tables:

Charleston Harbor, Tables 5, 6, 7, 8, 9, 10 and 12.

Also Winyaw Bay Table 5. Also Gilmore's contracts for Cumberland Sound Tables 1, 2 and 8.

Also St. John's River, Fla. Tables 1, 2, 3, 4 and 5 (See notes under those tables, Compilation, pp. 10 to 11).

So that the Court will have to bear in mind that instead of the prices in these tables being for fascine mattresses "virtually the same as Carter's 3d Design," that they are for mattresses 18 inches thick when compressed in the finished work, having about three times the material called for in Carter's 3d design.

Prices on Gulf Coast, no Criterion.

(5). Blandford's tables of prices for other points in Florida, and for points in Texas and Louisiana are valueless, among other reasons, because the conditions are wholly different from the conditions in Georgia.

An illustration of this is found in the following extract from Ripley's own report to Col. Mansfield, made June 21, 1881, relative to the scarcity of material at Brazos, Texas:

> "Nothing in the line of lumber or piling can be obtained in this vicinity. Lumber brought from Louisiana or Florida is retailed at Brownsville at $40. per 1,000 feet B. M. Brush suitable for fascines is not abundant. The great mass of the brush which grows almost everywhere in the valley is mesquite and ebony, and both are thorny."

And indicating that suitable brush would probably have to be obtained 90 miles up the river (Reports of Chief of Engineers for 1881, pp. 1367-70, offered in evidence by the defense (Shields Vol. 3), p. 1953.

Compare this with the fact that brush at Cumberland Sound was obtained by defendants within three to eight miles of the jetty, and near the shore (Thomas F. Gaynor for defense (Shields Vol. 3), pp. 2574-5.) So scarce was material suitable for that purpose at Galveston, even, that the use of poles as binders or grillage for the fascine mattresses, had to be dispensed with, and binders made of cane fascines used instead. (Blandford's Compilation, p. 18.)

Comparison of Galveston Mat.

According to Blandford and Ripley's figures, the material to make a Galveston mat, 95 feet long, 30 feet wide and one and a half feet thick, cost as follows:

40.8 Cords of brush for filling, at $4.50	$183.60
10 Cords of cane for grillage, at $6.00	60.00
Total,	$243.60

(Blandford's Compilation, pp. 17 and 18.)

In other words the cost of the fascine grillage used was one-fourth of the cost of the entire material in the mat.

And yet he asks the court to compare (Table 4, Compilation, p. 42) the cost of this mat with its costly cane grillages, at $1.39, per square yard (which is the price calculated by him, but not stated in the Engineer's Report), with Carter's 3d design mat at $1.10, per square yard, *without reference to the thickness* of the respective mats and to draw the conclusion (Table of average prices, Compilation, p. 43), that the Savannah mat was the cheaper to the Government.

Fortunately a drawing of the Galveston mat was in the Reports of the Chief of Engineers, 1881, Vol. 2, p. 1328, and was identified and offered in evidence as Complainants' Exhibit 334, Shields. and Defts Exh 48 Court Martial Vol 27

It is seen to be a three-course fascine mattress, made of fascines having a diameter of 6 inches in the compacted mat, and making a mat 18 inches thick exclusive of grillage. Including the grillages it was 2 1/2 feet thick.

The 18 inches was the thickness of three courses of fascines reduced to 6 inches in diameter by compression through quilting and binding into mattress form (Compilation, p. 19, Col. Mansfield's note). The fascine fillers were purchased from the contractors already made. In reaching the dimension of 18 inches of filler, the whole of the materials of the mattress, including the grillage material, had undergone an average compression of 31 per cent. (Compilation, p. 18, note.)

The fascine fillers, therefore, in the Galveston mat must have been more than 6 inches when purchased as fascines.

Carter's 3d design mat was made of fascines 9 inches in diameter before being made into mats, and the testimony is that if subjected to compression they would be reduced to 6 inches in thickness in the mat. Schermerhorn (Shields Vol. 3), pp. 2053-2056. So that considering the fascine fillers in

the respective mats, there was as much material called for in one Galveston mat of three courses for the aggregate price of $1.39, per square yard, as there was in a three-course Carter multiple mat, paid for at three times $1.10 or $3.30 at Cumberland Sound.

Or if we leave out the question of compression and take Carter's fillers at 9 inches, it would be equivalent to two of Carter's mats at the price of $2.20, per square yard, as against $1.39 at Galveston. And as the number of grillages in one Galveston mat was the same as in three of Carter's put in multiple form, and as the Galveston grillage was much the more costly, the disparity is still greater as the price of the Galveston mat included the more costly grillage.

Comparison of Sabine Pass Mattress.

Equally unfair are the figures used by Blandford as the price of mattresses at Sabine Pass for comparison (Table, p. 33 of compilation) with the prices of Carter's 3d design mattress.

The prices actually bid and accepted for mattresses in place at Sabine Pass, Texas, were not by the *square yard* at all, in any of the following bids as shown by his tables (Compilation, p. 15), but were as follows:

Table (3) Mattresses per cubic yard $1.80
(4) " 1.55
(5) " 1.50

And the majority of these brush mattresses were put in 4 feet thick (Compilation, p. 14).

Blandford arbitrarily assumed a mat 19 inches thick, and taking a cubic yard as 36 inches in depth calculates the proportionate cost of the 19 inch mat by simple proportion.

(3). 36:1.80::19:cost per sq. yard. = 95 cents.
36:1.55::19: " = 82 "
36:1.50::19: " = 79 "

He then carries over these figures so obtained for a nineteen inch mat, into his Table p. 33 of Compilation for comparison with Carter's 3d design mattress which is only 9 inches thick.

But why should he not have calculated the cost of an equivalent mat at Sabine Pass, 9 inches thick, to correspond with Carter's, rather than one 19 inches thick? The calculation would have been

(3). 36:1.80::9: cost per sq. yard. = 45 cents.
(4). 36:1.55::9 " = 39 "
(5). 36:1.50::9 " = 38 "

And these are the figures he should have carried into his table, p. 33, for comparison.

Again. In Table (6) for Sabine Pass, p. 16, of compilation, the bid was $1.70, per square yard, for mattresses, and Ripley has carried this price over into his table, p. 33, and compared it with his deduced prices for the 19 inch mattresses above referred to. Thus making it appear that the price per square yard for mattresses at that place was about double that year what it had been the year previous and the year afterward. The anomaly should have called his attention to the fact that he had no foundation for his assumption that this was an 18 or 19 inch mattress.

Under Table 6, he has entered in the compilation this note, "Method of construction the same as in previous contracts," and he refers to Report of Chief of Engineers for 1891, p. 1833, only. This report does not contain any statement of the thickness of the mattress, as a majority of the mattresses under the previous contracts had been 4 feet thick (Compilation, p. 14), the inference would be that it was a mattress of that thickness. If so, $1.70, per square yard, 4 feet thick, would be equivalent to $1.27, per cubic yard, or 32 cents, per square yard, for a 9 inch thick mat, when put in multiple form.

EXCUSES OFFERED FOR ALLOWING USE OF MULTIPLE MAT.

BETTER ENGINEERING.

The first excuse offered is that some other officer has done the same thing, and they bring *Major C. McD. Townsend*, of the Engineer Corps, Carter's strong partisan, to prove it. He testified that the multiple mat is not a literal interpretation of the 3d Design in Carter's specifications. (Shields Vol. 3) pp. 1840-1.

But he says:

> "When an engineer proceeds to put in a work that is not absolutely and correctly specified why he puts in the one that is to the best advantage to the Government, and if to leave out those grillage poles it is to the advantage of the Government he will take them out." (Shields Vol. 3) p. 1839.

He testified that if the engineer was going to put the mats in the jetty, one on top of the other, and without sinking them singly with stone on each, as the literal interpretation of the specifications called for; that it would be better engineering and be better work to omit the grillage poles, better if all grillage poles were omitted. (Shields Vol. 3) pp. 1837-38.

He admitted that he had testified in the Court Martial that he had never up to that time used a multiple mat, and that if he had intended using a multiple mat he would have put it in the specifications. (Shields Vol. 3) p. 1831.

But he testifies that since the Court Martial under very similar specifications to Carter's, without mentioning multiple mats, he has allowed them to be used for the single mat design, and that too in the face of the conviction of Captain Carter very largely because of their use. And his excuse

for not providing for them in his specifications for the benefit of bidders is,

> "I forgot to put it in, I should if I had thought of it, but I forgot it."

He admits that he was assistant engineer in personal charge of the Washington Aqueduct construction under Col. Lydecker. That he had the immediate and personal charge of the work. That the contractors in building the tunnel left a lot of vacant or hollow space behind. That the fraud was carried on for some time both before and after he was put in charge before he discovered it. That Col. Lydecker being the superior officer in charge was court martialed for it. (Shields Vol. 3) p. 1837.

I submit that this evidence is material to show that this witness' mind does not run in the direction of seeing fraud, and as exhibiting a carelessness which destroys the weight of his testimony.

If it does not mean this, then the use of the multiple mat by him, since the Court Martial under the circumstances stated by him was an effort to make facts which he could testify to for the benefit of his friend, which carries his partisanship to the extent of destroying the value of his testimony.

George Y. Wisner, testified that if a multiple mat was to be built by piling up a series of single mats one on top of the other, that it would be better construction to leave out the omitted grillage poles. (Shields Vol. 3) p. 1702. That the poles, and the lath yarn used to tie the fascines are merely instruments to get the brush material in place in the jetty. (Shields Vol. 3) pp. 1701-2.

But this does not meet the case which Carter has to explain.

It appears from the testimony (*ante*, p. 347) that the vir-

tues of the multiple mat were fully discovered, and practically nothing else used after September, 1893, both under the Savannah and Cumberland Sound contracts of 1892. If this alleged superiority were a new discovery after the letting of the 1892 contracts, we could conceive that an engineer on making a modified contract might be justified in discarding the extra material which the adoption of the new method made superfluous. *to the end of that contract.*

But how could that justify him in requiring bidders, to bid on all this superfluous material, which he knew he was not going to require under the 1894 and 1896 contracts at Cumberland Sound, and 1896 contract at Savannah?

It is as if a Quartermaster charged with the duty of letting a contract for furnishing shoes for army horses, and being advised that shoes made of copper were the best, should make a contract to accept so many copper shoes, and should thereafter find out that a much cheaper steel shoe was the most serviceable. In such a case we might justify him in accepting the cheaper shoe at the contract price. But suppose after that contract was ended and after he had ceased to use copper shoes, he should advertise new contracts for copper shoes and after letting them at the high copper shoe prices, he should proceed to accept as before the cheap steel shoe at copper shoe prices? We would be bound to conclude that he was either in league with the contractor to defraud or an idiot.

In other words the fact that the omission of grillages and cross-fascines from the mats when made in multiple form, makes a better mattress from an engineering standpoint, does not meet the case.

Carter stated to the Board of Officers (Board Record Vol. 1), p. 238: Vol 2 P 513

"When I made those specifications in 1892, I thought it would be the best thing, but I found in the construc-

tion of the work, that I had to *make changes*, and I did that under that clause which gives the United States power to make variations where the cost is not increased."

But why then did he not specify the multiple mat to be bid on by everybody in the contracts subsequently let, and in which he put in all multiple mats? Why were they not specified in:

Contract 5811 of Nov. 15, 1894, for Cumberland Sound?
Contract 6049 of Apr. 20, 1895, for Jekyl Creek?
Contract 6515 of Oct. 8, 1896, for Savannah Harbor?
Contract 6517 of Oct. 8, 1896, for Cumberland Sound?

Carter stated before the Board that he intended at the time the Project of 1895 was made for Cumberland Sound, to use the multiple mat in that work. (Board Rec., Vol. 2) p. 475.

*

ALLEGED GAYNOR PATENT ON MULTIPLE MAT.

Carter stated (Board Record Vol. 1), p. 146:

"That it was not put in the specifications was for the following reason—that that method was patented by the Atlantic Contracting Company and to have put it in the specifications would have given that company the monopoly."

(Board Record Vol. 1) p. 219:

"Q. (By Major Adams) Explain what is patented!

A. The thing that I understand that is patented is the method of building and sinking those large layers.

It is the method of doing it that is patented.

Q. (By Major Adams) It is possible then for a man to put them in position by his own method?

A. (Capt. Carter) Yes, sir; it would be very difficult to do it.

I explained to all the contractors how I wanted this work done, and told them to go and look at the work, see how it had been done, and asked them to look at the plant which the last contractor had, and in that way they knew how I desired it built.

I see now in view of what has been said, that criti-

P. 480. Note

*Carter testified before the Ct. Martial that he did not recall any other specific reason for his not having specified for the multiple mats in these subsequent contracts other than the alleged Gaynor patent and "that there was absolutely no necessity for it." (Vol. 8, p. 3914.)

cism can justly be made against this. My object was to have something by which they could get around that patent, and therefore I spoke of single course mattresses."

Carter testified (Court Martial Vol. 18), p. 4221:

"Q. Was any ownership in the Atlantic Contracting Company in that patent or invention ever brought to your knowledge?

A. I think I got the information from the member of the Atlantic Contracting Company who got the patent. I think it was William T. Gaynor."

The alleged patent issued to W. T. Gaynor was put in evidence as Defendant's Court Martial Exhibit No. 44. It purports to be a Patent

"For Improvement in Barges for Transporting and Launching Mattresses for Jetty work."

It shows that the Patent was not applied for until December 23, 1895, and not issued until November 24, 1896.

It states:

"My invention does not relate to the construction of the mattress, but to the means for transporting and launching it. It will be understood, however, that a mattress can be more conveniently constructed on my peculiar platform."

It will be seen, therefore, that since the alleged patent was not even applied for when Contract No. 5811 of Nov. 15, 1894 for Cumberland Sound, and Contract No. 6049 of April 20, 1895, for Jekyl Creek were let, and since both of those contracts were let long after September, 1893, when the use of multiple mats launched from barges had been introduced, that the alleged patent could be no excuse for Carter's not having specified the multiple mattress in the specifications for those contracts for he used nothing else but multiple mats in those contracts. (Wyman Vol. 9) p. 4408.

Moreover, Carter had been putting in multiple mats built over the end of the barge, five courses high built in the con-

tinuous form at Savannah Harbor as early as the first part of the 1892 Contract (*ante*, p. 346).

Moreover, Carter had by letter authorized the use of multiple mats at Jekyl Creek "constructed on barges and launched in place" as early as May 5, 1893 (*ante*, p. 348).

Moreover, the contractors had been using the multiple mats launched from barges for two years prior to Gaynor's applying for a patent for his "method of launching." The excuse of Gaynor's alleged patent deterring Carter from specifying multiple mats to be bid on therefore falls to the ground.

THAT THE STONE WOULD SINK IN THE MUD.

Another excuse offered for the use of the multiple mat in the Savannah River contract of 1892, is that the river bottom is made up largely of silt, and that if a large amount of stone were used, the jetty would sink in the mud, and therefore it would require more material. That by doing away with the stone and substituting brush, that a light jetty was built, which attained the object less expensively.

But Carter had been working on that river ever since 1884; he had made the most extensive examination and surveys of the currents, river bottom and conditions, which he embraced in his project of 1890 (*ante*, p. 304). He knew the conditions there before he let the big contract of 1892, and if the conditions called for a light brush jetty he should have provided for it in his specifications. General Gillmore had built numerous of these fascine jetties, but he did it by building them of fascines put in singly or in mats, and paid for by the cubic yard (*ante*, p. 250), and that too at a cost per cubic yard of about one-fourth of $3.80, the cost of Carter's multiple mat per cubic yard (*ante*, p. 262).

Besides, if Carter made all his specifications and estimates wrong in this particular through ignorance of the river bot-

tom in that contract, it would in no wise excuse him for making the same kind of specifications, and putting in all multiple mats in the subsequent contracts let in 1894, 1895 and 1896, and that too for contracts which were not for building jetties in a "silt bearing stream."

THE D. POWERS' CONTRACT OF 1902.

The difference is this, that in specifying for the single course mattresses sunk separately, each with its load of stone on it, and then allowing the courses to be put in in multiple form, it cost the Government $3.80 per cubic yard under Carter, for brush bundles in place. While Captain Gillette put in at Mackeys Point, in Savannah Harbor, being at one of the same places where Carter put in his brush mattresses (Hewlett Vol. 1), p. 117, under the D. Powers Contract of November 7, 1902, brush bundles at 51 cents per cubic yard (Hewlett Vol. 1), pp. 102-3.

It is true this was but a $2,000 contract, but at Carter's rate of $3.80 per cubic yard it would have been a $14,902 contract.

THE BRUSH FASCINE AND MILITARY FASCINE.

A great deal of evidence has been offered by the defendant to show that a brush fascine, constructed by leaving all the twiggs and leaves, will in a silt bearing stream, catch and hold the silt, and build up a dirt dam more effectually than a military fascine, or fascine made of a bundle of rods denuded of twiggs and brush.

The evidence shows that the bare pole fascines are much

the most costly to the contractor. The point that the Government makes against Carter, is that he fixed his specifications so that as he construed them against A. J. Twiggs at Augusta, the contractor had to put in military fascines (*ante*, p. 320), and so that any outsider had to bid military fascine prices, while Greene & Gaynor were allowed to supply brush bundles made of pine tops, saw palmetto, small brush, twiggs and leaves (*ante*, p. 378).

Indeed, under the same kind of specifications, when Carter was under Gillmore, Carter in his letter to John F. Gaynor, of April 23, 1885, required "military fascines" to be put in on the Savannah Harbor work. This, however, was before the great changes made by Carter in 1891.

No one could object to his untrimmed brush fascines, if he put enough in and did not pay military fascine prices for them.

It is generally conceded now that it is better engineering on account of fire to build a brick building in a big city than a marble one. Yet one would be foolish to advertise and award a contract for a marble building, with intent to accept a brick building after the contract was let.

Capt. Gillette expressed this idea in his colloquy with Carter before the Board of Officers, had on September 24, 1897, prior to the full development of the frauds in Carter's work (Board Record Vol. I), p. 451:

> "Captain Carter: I would like the Board to examine the physical condition of the work.
>
> Col. Gillespie: Is there any part of the work above water that the Board can see?
>
> A. Not in the last two contracts; that is all under water. The other is above water. If there is any question as to the condition of the work, or as to its successful accomplishment. I would like to have the Board see it.
>
> Capt. Gillette: There is no doubt that the depth of water that you claim, has been obtained in Savannah Harbor.

I have no *engineering* objections to any of the mattresses that have been put in.

Capt. Carter: The question then is the divergence from the specifications, the idea being that the specifications ought to have been different if those mattresses were constructed?

Capt. Gillette: Yes, sir, and the question of paying enormous prices for the mattresses used."

The depth of water alluded to as claimed by Captain Carter, was available depth for ships coming up Savannah River from the ocean, and not to the depth over the entire 400 feet width of channel called for by the project of improvement. Carter never got that (*ante*, p. 305).

That Gillette had no engineering objection to Carter's brush bundles for use in a silt bearing stream, is shown by his specifying them in the D. Powers contract for building up the Mackeys Point training wall in the Savannah River (*ante*, p. 483). But Gillette *specified brush bundles* when he called for bids. His specifications read (Hewlett Vol. 1), p. 102:

"39. Brush. The brush will be in bundles of about 16 feet in length, and from 9 to 12 inches in diameter after choking.

They may be made of any variety of brush, except pine.

The brush will be reasonably straight and not larger than three inches in diameter at the butt. Only the largest limbs need be cut in order to allow close packing.

The bundles must be choked as tight as can be done by one man working with a leverage of one to four, and must be tied at five places with a double strand of lath yarn.

The bundles must be carefully piled on barges, or on shore for measurement before being placed in the work.

Brush will be paid for by the cubic yard in place."

The price at which the contract was let was 51 cents per cubic yard as against $2.80 per cubic yard under Carter's contract for work at the same place, where the brush was paid for by the square yard and put in in multiple mats.

ATTEMPTS TO SHOW BY TESTIMONY OF A GENERAL CHARACTER THAT THE MATTRESSES WERE WELL CONSTRUCTED.

John McGiffin, for defense, was a pilot commissioner at Fernandina for 10 years, and now mayor (Shields Vol. 3), p. 2068); saw two mats built on the barges under 1896 contract at Cumberland Sound, examined them with an idea of afterward bidding on future contracts, saw no holes in them. (Shields Vol. 3), pp. 2070-1-4-5.

This testimony amounts to nothing. It is not to be supposed that if any fraud of an observable character was in general going on in the defective construction of mats, that it would be carried on under the eye of a visitor who is especially watching the process, and that, too, for the purpose of becoming a possible rival.

Edward D. Lukenbill, for defense, agent for Seaboard Air Line, and former Mayor of Fernandina, describes a multiple mat which he saw built *on the shore* under the 1896 contract at Cumberland Sound. (Shields Vol. 3), pp. 2093-4-5-6. Mr. Rose admits that they were not built on the shore under that contract. (Shields Vol. 3), p. 2094.

W. G. Austin, for defense. He was inspector on the 1892 contract prior to the summer of 1893. (Shields Vol. 3) p. 2632-3. He never was employed in jetty work under Carter after that time. (Shields Vol. 3) pp. 2632-3. (See *post,* 493.)

All the testimony shows that the multiple mats constructed on barges were not commenced to be used until September, 1893. Austin admits that he never saw such a multiple mat while he was in the service. (Shields Vol. 3), p. 2637. Saw several of the kind (called continuous mats) built under the immediate inspection of the officers at the jetty, and con-

structed there over the side of the barge. (Shields Vol. 3) pp. 2636-2646.

He did go on a multiple mat in 1895 while he was not in the Government's employment, out of curiosity. He did not look for any holes and did not see any. (Shields Vol. 3) p. 2639. When we consider that the fraud in the *actual construction* of the work is charged to have been accomplished by and through the use of the multiple mats, what is his testimony worth?

Campbell Ford, for defense. Now lives in Virginia. (Shields Vol. 3) p. 2537. Was inspector in Savannah District from fall of 1893 to fall of 1894.

The only work he ever inspected in which multiple mats were put in, was on the big training wall below Fort Pulaski (Cockspur Training Wall) in the fall of 1894. He was only engaged at that between 2 and 3 months. (Shields Vol. 3) p. 2542.

He never saw a multiple mat built except one and that was a special one he superintended the construction of himself. (Shields Vol. 3) p. 2557.

And this was the *last* mat constructed for that training wall. (Shields Vol. 3) p. 2544. The only time he ever was at the brush camps where these multiple mats were constructed was when he built that last mat. (Shields Vol. 3) p. 2558.

That when he described in his testimony the construction of the multiple mat, he was referring only to the one he built himself. (Shields Vol. 3) p. 2558.

That while he was in that service the mats were brought up to the place of putting in already completely made. (Shields Vol. 3) pp. 2556-7.

That when so completed, the heart of a mat could not be seen, but he says, by reason of the fact that the mats were

built in steps, you could see the greater part of it. (Shields Vol. 3) p. 2557.

We know that this statement, if true, in regard to work under the 1892 contract, is not true if applied to the work under the 1896 contract, where the dimensions of the smallest mattress in the series composing the multiple was in most cases 50 by 80 feet, the lower courses being 50 by 100 feet.

He further testified that he did not see any holes in the mats. (Shields Vol. 3) p. 2543. That it would cost more to build a hole in them than to construct them properly. (Shields Vol. 3) p. 2557.

> "Q. How could you tell then whether there were any holes on the inside, we will say of a 12 course mat 50 by 100 feet in width and length, and taking a course of mattress say 8 or 10 feet down from the top: how could you tell what was in there by looking at it?
>
> A I would like to make an observation here.
>
> Mr. Cooper was the engineer in charge and I was only acting as his assistant and I was not responsible for it anyhow and it was not my place to report it." (Shields Vol. 3) p. 2557.

The witness explains further on (p. 2572), that he means, that it was not his business to report anything he saw going on wrong, otherwise than to Mr. Cooper. This does not take away, however, the force of the apology of the witness for want of inspection of the mattresses while being constructed This witness left the District in the fall of 1894, and his testimony throws only a side light on the larger frauds in *actual construction* which were carried on as the conspiracy advanced.

Thomas H. Rees, for defense, Captain, Corps of Engineers. Graduated at Military Academy in 1886. Was in Savannah District, as assistant to Carter only from 1889 to April, 1893. (Shields Vol. 3) p. 1895.

As the testimony is that the use of multiple mats built on barges was not commenced until September, 1893 (*ante,* p.

347), it is plain that his testimony as to what he saw, as to actual construction under the contracts while he was in the district, can throw but little light as to frauds in actual construction through the introduction of the multiple mat.

Some of his testimony, however, is significant.

He testified that during the whole time he was in the Savannah district, he never had immediate charge of construction of jetties, what we call inspector's work in the daily inspection of the material and work that went into the jetties. That the nearest he came to that position was on the work below Augusta, under the John F. Gaynor contract of September 9, 1891, where he started up the work and left an inspector there in charge of it, with instructions how to do it. (Shields Vol. 3) pp. 1910 and 1895-6.

That he was there only a week at that time. Visited the work on one or two occasions afterward, and spent a day on the work. (Shields Vol. 3) pp. 1910-11.

This work was covered by a small $15,000 contract. (Shields Vol. 3) p. 1925.

But even here Carter takes the interpretation of the specifications out of Rees' hands. In putting Rees in so-called charge of that work, he gives him these written instructions (*ante*, p. 330):

> "The specifications *are elastic*, and the *contractor has been given a memorandum to enable him* to begin getting out material."

While in the Savannah district his main service was in making surveys and in being in charge of snag boats, improving the smaller rivers. (Shields Vol. 3) p. 1896. While in Savannah district, he did, under Carter's directions, make occasional inspection trips to both Cumberland Sound and Savannah harbor. (Shields Vol. 3) pp. 1910-11-12.

He never had the immediate charge, and never had the

responsible charge of any work of importance carried on in the district during his service there. (Shields Vol. 3) p. 1912.

He modifies his previous statement about seeing a multiple mat before he left the district. (Shields Vol. 3) p. 1913.

He never saw a multiple mat sunk from a gin barge. (Shields Vol. 3) p. 1914.

Never visited the brush camps more than 4 or 5 times. (Shields Vol. 3) p. 1914.

He had no personal knowledge of mats sinking in the mud; that was only Carter's statement made as a reason for the use of multiple mats. (Shields Vol. 3) p. 1914. He never saw a mattress put into any of the works in the Savannah district, after April, 1893.

It seems to me that this testimony is worth little, except to show that Carter kept this young and then inexperienced Lieutenant during the time he was in the district in such positions under such limiting instructions, that he could not understand or see what was going on.

See as to the subsequent conduct of Rees (*ante*, p. 331).

ATTEMPT TO SHOW WELL CONSTRUCTED MAT BY ONE STRANDED ON THE BEACH.

Another hypothetical question based on false premises. J. W. Rutherford, for defense, testified (Shields Vol. 3), p. 2478:

> "Q. (By Mr. Rose.) Assume that in May, 1897, the contractors were engaged in sinking a mat somewhere along the line of the jetty (at Cumberland Sound); at the point where they were at work the mat got away from them on account of some storm or something, an eight course multiple mat built as I have described to you; *that it went out to sea; went some six miles from the point where it was lost, came to shore through the breakers* again, and went up, so that when the tide went down they could drive around it on the beach, and that for a month, or sometime afterwards the mat continued to be practically intact. Would that show anything to you with reference to its construction?

A. Undoubtedly it would show that it was a remarkable construction; remarkably good construction to stand the action of the elements *such as you describe.*"

Now these questions are all based on a false assumption. We have in the evidence the official report of the loss of the mat referred to, made at the time by Marion Twiggs, the Assistant Engineer in charge (now dead). See Shields Exhibit 369, sheet 2. Vol 3,

It shows that the mat which was lost *at the jetty and which went to sea,* was lost on April 30th, 1897.

It shows as to the mat which went ashore in May as follows:

"May 22, 1897, an attempt was made to sink two mats; one was placed in the work, and the sea became so rough that an attempt was made to take the other to a safe harbor; it slipped off the barge *en route* and went ashore on Amelia Island."

The report also shows that it was a mat being put in at the *South* Jetty. (See Exhibit 369 and also Original Report, Exhibit Q. Q. Q.)

It therefore follows that coming from the South Jetty, it would not have had to go to sea or through the breakers, and further from the report, it appears that it did not have to travel six miles along shore, but was conveyed on the barge, and that when it did slip off *en route* it went ashore.

John McGiffin, for the defense, testified that it was in June, 1897, that he saw this stranded mat. It was on Amelia Island beach, and was about four miles from the end of the jetties. (Shields Vol. 3) pp. 2071-2. He testified that if the mat had come in at high tide, it could have been landed where it was even at a single tide. (Shields Vol. 3) p. 2081. He only examined that particular mat as a casual observer. (Shields Vol. 3) p. 2074. He walked over it and found it intact, no parts of it broken away. (Shields Vol. 3) pp. 2072-3.

Lukenbill did not testify that he did anything more than "go around" the mat on the beach. (Shields Vol. 3) p. 2090. And that he could not see anything through it. (Shields Vol. 3) p. 2090.

It is true that, Thomas F. Gaynor testified, that he saw a mat which he says was this when it escaped and went to sea and that some weeks afterward he saw it on the beach (Shields Vol. 3) p. 2584. But the official reports of the officers show that the mat which went to sea some weeks prior to June, 1897, was not the mat which went ashore on Amelia Island.

From the foregoing character of testimony, founded on a false assumption, the defense would have it inferred, not only that that particular mat was well constructed, but that all of them were so.

What is that character of testimony worth in the face of the following entries made at the time by Marion Twiggs in his official reports to Carter?

> March 3, 1897. Mat 1.—"145.83 square yards of the north side *of top* course came out while sinking *on account of defective wiring.*"
>
> March 4, 1897. Mat 2.—"121.11 square yards of *top* course came out while sinking on account of defective wiring."
>
> July 3, 1897. Mat 3.—"391.11 square yards recommended deducted, on account of mat not being of proper thickness and defective construction of the *top* course." (See Shields Exhibit 369, sheets 1, 2 and 3.)

Take this in connection with Cooper's report to Carter of the 1896 work at Savannah, on mattresses No. 61 and 64 sunk in April, 1897 (See Exhibit 368, Shields, sheet 4), as follows:

> "Mat 61, one course to be deducted. Mat 64, one course to be deducted The loss was caused by *insufficient wiring on nearly all* mats recently sunk, and more losses would have occurred if the weather had been rough."

Now, when we consider that Carter kept no inspectors a

the camps to see the multiple mat made up, that the *top* course was the only one which the Assistant Engineer could really examine when the mattress was brought to him for measurement at the jetty, the above is significant.

It is claimed, however, that the mats must have been strongly constructed, because sometimes when the supports were knocked out from under one side of the "gin poles" upon which the mat rested on the barge, for the purpose of making it slide off into the water, and there was a hitch so that the mat did not slide off, that the tugboat would butt it off, and that on one occasion the tug broke its "nigger head" in doing it, without injury to the mattress. Testimony of Sweeny (Shields Vol. 3), p. 2649.

But it appears that the boat knocked some piling down at the same time, and it is much more probable that the injury was received by the boat in that way. (Shields Vol. 3) pp. 2650-1.

EMPLOYING PARTICULAR INSPECTORS ON THE RECOMMENDATION OF THE CONTRACTORS.

The account of B. D. Greene, in the American Exchange National Bank of New York (Exhibit 242), shows that Greene, on September 20th, 1892, issued a check for $100 in favor of "Austin," initials not given.

On September 22, 1892, W. G. Austin, from Baltimore, wrote to Captain Carter a letter, saying:

> "Capt. B. D. Greene has been kind enough to offer his aid in securing a position for myself and brother and has instructed me to write a letter of application to you." (See Exhibit 11, Shields.)

Letter copied in the record (Shields Vol. 1), p. 260. Th letter was found in Captain Carter's papers in the file ca and is fully identified. (Record, pages 250-251, 510, 549.)

W. G. Austin was shortly thereafter employed by Carte as recorder, as foreman, as inspector and clerk. (Testimon of J. W. O. Sterly, Shields Vol. 1) p. 251. He was employe as inspector by Carter and was seen at work by Cooper withi a year after the date of that letter. (Testimony of Cooper (Shields Vol. 1) p. 510.

W. G. Austin was an inspector on the Walsh contract Augusta in 1893. Testimony of J. L. Gallagher, the book keeper of the Gaynors (Shields Vol. 1), p. 606, and when th contract was through, was visiting the Gaynors' office in Sa vannah a number of times demanding money for somethin Testimony of Gallagher (Shields Vol. 1), p. 608.

In view of Curtis' affidavit as to attempts made by Green & Gaynor to bribe him in 1889, it is unaccountable that Carte should appoint a man as inspector on Greene's work o Greene's recommendation.

Defense.

W. G. Austin, called as a witness for the defense, state that he was then (1900) a cotton inspector at Savannah. Tha when he wrote the letter of Sept. 22, 1892, to Carter, he wa then in Baltimore, Md.

That the check of Greene of Sept. 20, 1892, to "Austin was not for him.

That he did not know Carter prior to writing that lette (Shields Vol. 3) p. 2642. That he thought Greene was i charge of Savannah District, and wrote him for a place an the latter replied Carter was, and so he wrote the letter t Carter. (Shields Vol. 3) p. 2631.

He denies the conversations testified to by Gallagher as to his demanding money from the Gaynors in the summer of 1893 at the termination of the Walsh contract at Augusta. (Shields Vol. 3) p. 2634.

He says he terminated his service under Carter in the summer of 1893. (Shields Vol. 3) p. 2633. He admits he borrowed money from W. T. Gaynor in 1894 after he left the Government service. (Shields Vol. 3) p. 2635.

We are not trying Mr. Austin. This testimony may be taken as clearing his skirts or not as you may consider it.

In either view, it does not change the fact that Carter is shown to have appointed an inspector on Greene's recommendation and this too after another inspector had charged Greene & Gaynor with an attempt to bribe him to make false inspections.

Practically no Supervision over Carter.

The Local engineers in charge of a District were supposed to be to a certain extent under the supervision of the Chief of Engineers and of the Division Engineer. The Division Engineer over Carter had his headquarters in Baltimore, and had supervision at the same time over a great many other districts.

THE DUTIES OF THE DIVISION ENGINEER.

The Regulations for Government of the Corps of Engineers paragraph 28, prescribe (Wyman Vol. 9), p. 4337:

> "The division engineers will exercise care and oversight over the engineering works of officers within their divisions; will *inspect the works* at least once a year; will counsel, advise and, in case of emergency, direct the district officer in matters pertaining to the engineering work in his charge."

General Wm. P. Craighill, who was division engineer over Carter from 1888 to May 10, 1895, testified (Shields Vol. 3), pp. 1817-18; that the specifications passed through his hands, *but the contracts let on them did not.*

THE MONTHLY REPORTS OF OPERATIONS.

The regulations required (Wyman Vol. 9), p. 4336: That the local engineer should send to the Chief of Engineers a monthly report of the operations in his district.

Carter testified (Wyman Vol. 9), pp. 4337-8, that he thought that General Craighill had in a letter to him required him also to send a copy of his monthly report of operations to the Division Engineer, but he might be mistaken about that. However, Carter testifies (Wyman Vol. 9), p. 4333, that he

did send a copy of his monthly report of operations each month to the Division Engineer.

These monthly reports to the Chief of Engineers, a sample of which is in evidence, as Exhibit 284 (Court Martial ~~Shields~~), shows that it is made in two parts. Vol 26 P13208-9

(1) A financial statement of the cost of operations from the beginning of the contract up to the end of that monthly report, but which does not show the kind or character of the material on which that money was expended, and

(2) A statement of the quantities of material put in at particular points during the particular month for which the report is made, without any statement of the prices or costs of the materials so put in.

Carter testified on cross-examination (Wyman Vol. 9), pp. 4550, 4548, that he did not send a complete copy of his monthly report to the Division Engineer, that he omitted the financial statement (1) above. Vol 18 P8842-8846

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Page 4550:

> "A. No, we were prohibited from doing that; nor would the financial statement, that was not furnished to the Division Engineer, as I remember now, as I recall it that was prohibited, and such information was sent direct to the Chief."

Carter testified under cross-examination (Wyman Vol. 9), p. 4549: Vol 18 P8841

> "Q. This monthly report only shows the amount of material used during the month, it does not show how much material had been used during the previous months does it?
>
> A. Oh no, it reports simply for the month to which it relates, but reports of that character were submitted every month, but the report for each month stood by itself."

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Carter testified (Wyman Vol. 9), p. 4339:

> "Q. (By Mr. Erwin) He (the Division Engineer) would have to figure up the monthly statements to find

how much material had gone in, and *compare it with the contracts* to see how much the contracts had estimated was to be used there, to find out whether you were exceeding your amounts, wouldn't he?

A. Oh certainly, if the estimated amounts were so much and he had the report month by month, he would have to figure up these reports in order to find out what the total was unless he asked me to do it for him."

General Wm. P. Craighill, who was division engineer over Carter from 1888 to May 10, 1895, and Chief of Engineers from May 10, 1895, to February, 1897, called as a witness for the defense, and *Colonel Peter C. Haines, Division Engineer,* after May 10, 1895, as well as *Captain Wm. M. Black,* all testified that these monthly reports of operations were not sufficient to put the Division and Chief of Engineers on notice of Carter's great changes in the quantities of material (*ante,* p. 311).

WM. P. CRAIGHILL ON INSPECTION.

General William P. Craighill, former Chief of Engineers, retired, testified on behalf of the defense in this proceeding as he had done at the Court Martial. He was retired September 1, 1897. He was Division Engineer from 1888 to 1895, and stationed at Baltimore, Md. (Shields Vol. 3), pp. 1763-4, and Chief of Engineers from 1895 to 1897, as above stated.

He testified, that the regulations required him to visit each district once a year (Shields Vol. 3), p. 1766. That the only dates on which he was ever in the Savannah District as far back as 1893 were as follows:

(Shields Vol. 3) p. 1767.

March 10th, 1893, Savannah River.

March 29th, 1893, at Savannah with Congressman Blanchard.

April 1, 1893, at Fernandina, with Congressman Blanchard.

March 20, 1894, Savannah.

March 21, 1894, Fernandina.
January 23, 1895, Savannah.
January 24, 1895, Fernandina.
January 12, 1897, Savannah.

Here we have to commence with the statement that between September, 1893 (the date when the multiple mats came into use), up to 1897, inclusive, Craighill was at Savannah in all but three days, March 20th, 1894, January 23, 1895, and January 12, 1897. That he was at Cumberland Sound but two days, March 21, 1894, and January 24th, 1895.

He further testifies that he *always notified Carter* when he was going to make his visits. (Shields Vol. 3) pp. 1769-1789-90. And see also his letter to Carter (Shields Vol. 2), page 956.

That he had great confidence in Captain Carter and did not expect to find anything going on wrong and did not look for it. (Shields Vol. 3) p. 1789.

That he had in general to rely upon maps and what Carter told him, because the work was buried under water as it progressed. (Shields Vol. 3) pp. 1791-2.

Could not tell what had been done under water without making a survey (Shields Vol. 3), p. 1793, and he never made a survey. (Shields Vol. 3) p. 1792.

The only mattress he ever saw in process of construction was the one he and Blanchard saw at Fernandina. (Shields Vol. 3) pp. 1793-4.

He saw some pass by on scows when he was in Savannah. (Shields Vol. 3) p. 1794.

He understood that the mattress which he saw at Fernandina was specially brought there for Mr. Blanchard to inspect. It was not at the works where the work was going on. (Shields Vol. 3) p. 1796.

He was invited by Carter to meet Blanchard there. (Shields

Vol. 3) pp. 1796-7. It was the questions about improving *Brunswick* that Blanchard was specially looking after. (Shields Vol. 3) p. 1796.

He testifies that the specifications passed through his hands, as Division Engineer, *but the contracts* let on them did not. That he, therefore, did not know that the effect in changes made in 1891, had increased the cost of brush material to the Government to 400 per cent. of what it had been previously. (Shields Vol. 3) pp. 1817-18.

He did not become Chief until May 10, 1895. (Shields Vol. 3) p. 1763.

And he never visited Savannah after that but once, January 12, 1897, just before he went out of office. (Shields Vol. 3) pp. 1767-8.

He testified (Shields Vol. 3), p. 1794:

> "Q. General, you never made any examination to find out whether the mattresses that went into the work under Captain Carter at Savannah at any time, conformed to the specifications for that work?
>
> A. No, except just what I could see, judging from the appearance of the mattresses from the deck of the boat with which I was making the examination. As I said before, I saw the mattresses on the scow ready to go into the water as I supposed, from what I saw of them.
>
> Q. You never got off the boat on which you were to examine any mattresses which you saw on the scows?
>
> A. I don't remember that I ever did, except the one at Fernandina.
>
> Q. Therefore, you could not have examined the construction of one of those mats to see how the details of it were made up?
>
> A. I think that I certified that I did not do that. There were the inspectors and assistant engineers *and Captain Carter* for that particular purpose, *and it took time* to do that and I hadn't the time"

And the defense relies on this testimony to show that Craighill's casual inspection ratified Carter's radical changes in construction from that required in the specifications.

What is that testimony worth on the issue of fraud in Carter's and the contractors' conduct?

By Mr. Rose:

CRAIGHILL ON THE RESULTS ACCOMPLISHED AT SAVANNAH HARBOR.

"Q. But as an engineer assuming that the cost of the work was less than four million dollars was it a reasonable amount considering the results accomplished?

A. So far as I know, it was.

Q. In your opinion?

A. Yes; that is the opinion I had at the time and have now. I must say yes, *but it must be qualified* by what I state. *I don't know what the depth is, and I don't know the cost.* (Shields Vol. 3) p. 1788.

He never investigated to see whether the money was economically spent. (Shields Vol. 3) p. 1797.

He tells us that the basis of his opinion is, what people interested in naval store matters in Savannah told him about results obtained by deeper draft vessels coming up to the city. (Shields Vol. 3) p. 1784. And he said he was stationed at Savannah in 1853 and they had little depth then. (Shields Vol. 3) p. 1784.

The witness testified he did not think $4,000,000 would be excessive for the 26 feet attained, commencing from a depth of 9 or 10 feet as he remembered it in 1853. (Shields Vol. 3) p. 1786.

The facts are 22 feet of water had been gained prior to June 30, 1891 (Exhibit 233), Shields, which is admitted to be correct. (Shields Vol. 3) pp. 2355-7-8.

He testified he knew nothing of the depth otherwise than as he saw them in the reports of the Chief of Engineers. (Shields Vol. 3) p. 1785.

And as we see, Carter only got a 240 feet wide channel where his project called for a channel 300 and 400 feet wide (*ante*, p. 305).

What is this kind of testimony worth on the kind of investigation we are now making as to fraud in the details of construction, and exorbitant prices paid through fraudulent letting of contracts?

COL. PETER C. HAINS, DIVISION ENGINEER. INSPECTIONS.

Colonel Peter C. Hains succeeded General Craighill as Division Engineer for the districts embracing that of Savannah on May 10, 1895.

It appears that after Colonel Hains was appointed Division Engineer he visited Savannah Harbor work once in 1895 under the 1892 contract, and that he visited Cumberland in 1896, on both of which occasions he saw mattresses.

The specifications for the 1892 contract, not only provided for the three designs of mattress but also provided in the specifications (See book of Printed Contracts, p. 297) for the use of 300,000 *cubic yards* of fascines.

Colonel Hains, referring to his inspection under that contract, stated before the Board (Board Record Vol. 2), p. 531:

> "When I inspected work in the Savannah River, seeing a very thick mattress on a barge, I asked Captain Carter how much this mattress cost, and I got the idea, from his answer, that it was ninety some cents *per cubic* yard.
>
> (Captain Carter) No, Colonel, I could not have said that.
>
> A. I would not say that you said that, you may have said ninety odd cents a square yard, but it did not convey that idea to my mind, because the mattress was a big mattress, and I could not see how you could measure it by the square yard, and I supposed, of course, it was by the *cubic yard*.
>
> (Captain Carter) As I say, I don't remember whether I explained this to Colonel Hains or not, but I took it for granted because the contract price was by the square yard and I took it for granted that Colonel Hains understood that.

A. You may have said that, I would not say that you did not.

(Captain Gillette) What contract was this?

A. The Savannah River.

Q. The big contract of 1892?

A. I think it was, yes.

Q. It is of record that that contract was for brush mattresses by the square yard, and brush fascines by the cubic yard?

A. That is right. This was a heavy mattress made up of fascines and brush, apparently, and I did not go on to the mattress; we passed close by it, and I noticed that it was very thick, and my impression was that it would not answer the purpose, but he stated that it would answer the purpose better than a thinner mattress."

Colonel Hains further stated, relative to the Cumberland Sound Contract of 1896, to the Board (Board Record Vol. 2), p. 530:

"It is true that I inspected that work about February, 1897, I think it was, and I saw a mattress being built."

(Page 531):

"As I said, I inspected the work and I saw a mat being made on a barge, I don't know how thick it was or how thick it was to be when it was finished."

Colonel Hains further stated (Board Record Vol. 2), p. 460:

"Q. Are you familiar with the type (of mattress) actually adopted and constructed by Captain Carter?

A. No, I am not familiar with it. I know in a general way the kind of mattress that was used and know that from the statements of his assistants; *but I did not know from observation.*

Q. Did you at any time see what was represented to be one of these mattresses?

A. Yes, I saw a mattress being constructed at Cumberland Sound, and I also saw mattresses constructed for the Savannah River."

(Page 461):

"Q. Had you known that Captain Carter was building a type of mattress not mentioned in the specifications,

would you have conceived it to be your duty to notify the Chief of Engineers of the fact?

A. Yes, I would.

Q. Do you think it right and proper for Carter to have adopted this type, and then authorized its construction without first having agreed upon a price reduced to correspond with the diminished cost of construction?

A. I do not."

SPECIFICATIONS FOR 1896 CONTRACTS NEVER APPROVED BY DIVISION ENGINEER.

In order to determine what kind of specifications are suitable for a work, the regulations require that the local engineer should make up a "Project of Expenditure" giving the details of the work to be done and details of the means to be used in doing it. This Project of Expenditure is then submitted to the Division and Chief of Engineers and when approved, the District Engineer then forwards his specifications for the contract to be let to do the work (*ante*, p. 127). Carter forwarded on June 4, 1896, the specifications for the 1896 contracts to the Division Engineer without there having been any Project of Expenditure made. Colonel Hains, Division Engineer received the specifications and made several specific criticisms on them which he indorsed on June 6, 1896, on Carter's letter of transmittal, but his principal objection was that there had been no "Project of Expenditure" made upon which the specifications were to be based, in his comments he says (Board Record Vol. 2), p. 508:

> "Respectfully submitted to the Chief of Engineers. I have no official information that an appropriation for this work has been made, nor have I any that the specifications have been drawn in accordance with an approved project. * * * These papers are submitted to the Chief of Engineers at the request of Capt. Carter, who it is understood will see him personally on June 8th in regard to them. Peter C. Hains, Col. Corps of Engineers, U. S. A., Div. Engineer S. E. Division."

Colonel Hains stated (Board Record Vol. 2), p. 509:

"That was my endorsement on the specifications that he sent in for Savannah River, so that you see that I did not approve them."

Colonel Hains made a similar endorsement on Cumberland Sound specifications. (Board Record Vol. 2) p. 510.

Turned Down Second Time.

Carter then made certain explanations and amendments to his specifications and resubmitted them to Colonel Hains. But Colonel Hains again refused to pass on them until a Project of Expenditure should be submitted to him, his endorsement was (Board Record Vol. 2), p. 511:

"BALTIMORE, MD., June 15, 1896.

Respectfully submitted to the Chief of Engineers. These papers now *seem* to be all right, but as stated in the first indorsement, I have no official knowledge of the appropriation having been made and *no project for the expenditure* has yet passed through this office or been approved. Peter C. Hains, Col. Corps of Engs. U. S. A., Div. Eng. S. E. Div."

Carter Submits Project June 22, 1896.

On June 22, 1896 (Board Record Vol. 2), p. 513, Carter submits his Project of Expenditure in writing to Colonel Hains. On this Colonel Hains wrote this indorsement (Board Record Vol. 2), p. 516:

"BALTIMORE, MD., June 26, 1896.

Respectfully submitted to the Chief of Engineers, U. S. A.

In view of the fact that the work is estimated to cost $243,950 more than the total sum for which the Secretary of War is authorized to enter into contract, it is obvious that a contract for completion cannot be legally made at this time, and one for part of the work is not authorized. Peter C. Hains, Col. Corps. Engineers, U. S. A., S. E. Division."

On Aug. 3, 1896, Colonel MacKenzie, Acting Chief of Engineers, recommended the approval of the Project over Colonel Hains' head (Board Record Vol. 2), p. 518. And it was approved Aug. 6, 1896, by the Secretary of War on that recommendation. (Board Record Vol. 2) p. 519.

On Aug. 15, 1896 (Court Martial Vol. 3), p. 535, the entry was made on Carter's letter by Colonel MacKenzie, Acting Chief of Engineers, "Amendments to the Specifications has been made by this office."

Carter was in Washington that day, worked the specifications through, and got them into his own possession (*ante*, pp. 133-135).

Colonel Hains stated (Board Record Vol. 2), p. 523:

> "These are the communications that passed in reference to this matter at Cumberland Sound, and Savannah River, so that it will be seen that I did not approve of the project so far as that was concerned, and my answer must be qualified.
>
> (Captain Carter) I had forgotten, Colonel, that you had.
>
> (Colonel Hains) The point I made was that the contract for a part of that jetty was illegal and could not be made, and that the specifications had been sent in before there had been any approved project, and I did not make any approval of them."

Exorbitant Profits to the Contractors.

ILLUSTRATED BY 1896 CONTRACT AT SAVANNAH.

The evidence shows that Carter kept funds advanced to him as disbursing officer, on deposit in the Merchants National Bank of Savannah and in the Sub-Treasury in New York.

It also shows that he usually paid the contractors off at the end of each month, for the work done during that month, whenever he was in funds for that purpose.

It also shows that he usually made payments for a month's work, by issuing several different checks aggregating the amount of the month's vouchers. The original checks issued by Carter to contractors were produced from the bank in Savannah and from the sub-treasury and are in evidence.

The endorsements on these checks show that some of them were deposited, in the local banks in Savannah or Fernandina and other evidence shows that the fund so deposited in the local banks went in general into the construction of the work and payment of salaries and allowances to Edward H. and William T. Gaynor. The other checks so issued by Carter are shown by the endorsements, to have been deposited in certain banks in New York and were divided between the parties as we will hereafter notice more particularly, as profit.

The cost of the work done under the contract, No. 6515, Atlantic Contracting Company, Savannah river and harbor, October 8, 1896, can be pretty accurately ascertained from the following figures:

Gallagher's Testimony.

J. L. Gallagher, bookkeeper of the Atlantic Contracting Company at Savannah testifies, that the fund for all expenditures on the Savannah work under that contract, was kept in the Southern Bank of the State of Georgia in Savannah in two accounts, one in the name of E. H. Gaynor, treasurer, and the other in the name of William T. Gaynor. (Shields Vol. 1) p. 600. These expenditures included the payment to merchants in Savannah for supplies bought, for labor at the brush camps, for forage for teams, for brush bought directly from the laborers, towage when other boats than their own were used and all the expenditures of the work, and everything was passed through the books which Gallagher kept. (Testimony of Gallagher (Shields Vol. 1), pp. 595-600.)

Mr. Gallagher testified that he footed up the total amounts of expenditure, as shown by the cash stub book, for the whole time of the running of the contract up to September, 1897, when he left the office. (Testimony of Gallagher (Shields Vol. 1), pp. 601-2-3.)

Objection was made to the witness stating from memory the amount of the footings as shown on the cash stub books on the ground that the books were the best evidence.

Whereupon, notice was given to the defendants by the United States Attorney to produce the original account books and check stub books. (Shields Vol. 1) pp. 603-5.

It was then finally agreed that the testimony of the witness be heard, subject to be stricken, in case the defendants produce the books.

The witness then testified that the total amount of expenditure for the contract work at Savannah, was *eighty odd thousand dollars*. (Shields Vol. 1) p. 616.

Out of this expenditure some four or five thousand dollars had been sent to Cumberland for the work there, in supplies. (Shields Vol. 1) p. 611.

It was afterwards agreed by defendants' attorneys, that the objection as to the books being the best evidence, shown by Bank accounts, was withdrawn as to Gallagher's testimony. (Shields Vol. 1) p. 829. The testimony of Mr. Gallagher is verified by the accounts from the Southern Bank in evidence.

The accounts of Edward H. Gaynor, treasurer, in the Southern Bank of the State of Georgia, and of W. T. Gaynor, in the same bank, during the same period, are in evidence. (Exhibits 209, 211, Shields.) See *post*, pp. 529, 530.

Exhibit 209 shows the total amount checked out of the Southern Bank on the accounts of E. H. Gaynor, Treasurer, and W. T. Gaynor, from October 10, 1896, the date of the opening of the account, to June 30, 1897, inclusive, to be $65.859.02

The Exhibit is identified and offered in evidence. (Shields Vol. 1) pp. 580-585.

Exhibit 211 shows the additional amount checked out after June 30, 1897, up to September 1, 1897, to be, for July	12,235.32
For August	10,126.34
Total	$ 88,220.68

Exhibit 211 is identified and offered in evidence. (Shields Vol. 1) pp. 581-585. The amount shown on the account books of the bank therefore fully verify Gallagher's testimony.

If the total amount withdrawn from that bank to the closing of the account, February 17, 1898, be taken, we have:

Withdrawals from October 10, 1896, to June 30, 1897	$65,859.02
And from June 30, 1897, to February 17, 1898, Exhibit 211	31,953.97
Total	$ 97,812.99

Exhibit 216 which is identified and offered in evidence (Shields Vol. 1), pp. 620-1, shows that vouchers had been rendered on contract 6515 of October 8, 1896, up to July 1, 1897, for.....230,749.90
And up to August 31, 1897, an additional amount of 31,159.50

Making a total up to that date of $261,909.40

And Exhibit 217, identified and offered in evidence (Shields Vol. 1), pp. 620-1, shows that for the work done under the entire contract 6515, Savannah, the defendants are claiming $350,000.00, having already been paid $261,909.40.

In other words, for work which actually cost the contractors less than $97,812.99, they have been paid $261,909.40, and the Government having refused to pay the balance of the claims made on the vouchers, they are suing the Government for the balance of the $350,000, claimed as shown in certified copy of the suit in the Court of Claims (Exhibit 218, Shields).

CUMBERLAND SOUND, 1896.

If the figures for the work at Cumberland Sound under the 1896 contract, No. 6517, be taken, the figures are equally startling.

The expenditures for Cumberland Sound were made through the First National Bank of Fernandina, Florida, through the account of William T. Gaynor, under the 1896 contract, as shown on Exhibits 203 and 204, identified and offered in evidence. (Shields Vol. 1) p. 572. See *post*, p. 528.

They show a total withdrawal of $108,150.31.

Of that amount $10,000 was returned to Greene as shown by the accounts, but it is not necessary to consider that for the purpose of this comparison.

Exhibit 217, identified and offered in evidence (Shields Vol.

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1), pp. 620-1, shows that there was actually paid on this contract $345,000 and the total amount claimed for work done under the contract is $604,739.02.

Exhibit 218, certified copy of the suits in the Court of Claims shows that the contractors are suing for this balance. Vol. 26 P1314-V

The above is sufficient to point out that for work under the 1896 contracts at Savannah and Cumberland which costs the contractors, in aggregate, something under $200,000.00, they are claiming at contract prices over $900,000.00, and that too, for work done within the short period between October, 1896, and the stopping of work about September, 1897.

For such immense profits the contractors could certainly afford to pay high and the next inquiry would naturally be what compensation did Carter get for this great bonus given to the defendants.

P. 511. Note

*Cumberland Sound Contract of 1894. This was the contract let in the name of Anson M. Bangs in which the previous Greene and Gaynor prices were cut down by nearly one-half through the bid of R. G. Ross & Co., through Agnew. (*Ante*, p. 205.)

In recommending the acceptance of Bangs' bid Carter on June 29, 1894, wrote the Chief of Engineers (Vol. 3, p. 1485):

> "The prices bid by Anson M. Bangs of Fayetteville, N. Y., are lower than the work can be done for, but as Mr. Bangs is responsible, authority is requested to award the contract to him."

Carter also told his Assistant Engineer Conant that "the contractor had bid very low on that work, less than what it could be done for" and "that he did not wish the contractor to be pressed in that work." (Vol. 4, p. 1632.)

The amount actually paid the contractor on that work, Exhibits 177 and 216 (Shields), Vol. 31, was $159,097.10.

Conant who was in charge of the work kept a close account of the cost to the contractors of doing the work under that contract including cost of labor, barges, material, and interest on investment, and the cost as estimated by him was $80,000. (Vol. 4, pp. 1615; 1634.)

THE ENORMOUS PROFITS DIVIDED UP BY GREENE AND GAYNOR ON CONTRACTS, BETWEEN JANUARY 1, 1893, AND MAY 12, 1896.

Benjamin D. Greene as a witness for Captain Carter testified before the court martial (Vol. 7, p. 3574): That while the Atlantic Contracting Company was nominally a corporation, it was practically a copartnership between himself and John F. Gaynor.

That the company never declared a dividend but the profits were divided up between John F. Gaynor and himself.

John F. Gaynor testified before the Board that while nominally W. T. Gaynor was the treasurer of the company, that B. D. Greene and John F. Gaynor received the vouchers (disbursing checks) and acted as treasurers, and the checks were deposited in the account of the one who received them. That sometimes when money was needed in Savannah to carry on the work, Greene would send down the money, and sometimes John F. Gaynor would send it. (Vol. 2, p. 938.) That the settlement adjustments were made monthly between Greene and himself. (Vol. 2, p. 938.)

It appears that the only books of account kept by the contractors were those kept by the local managers of the work at Savannah, which embraced nothing except the accounts with merchants, etc., and the disbursements to laborers and for supplies and expenses for doing the work. Testimony of Gallagher. (Vol. 23, p. 10993.)

The Government gave notice to produce these books but they were never produced. (Vol. 23, p. 11227.)

Greene testified however that there were no books kept which he knew anything about which would show the adjustment of the advances made and the monthly divisions of the profits made between him and Gaynor. (Vol. 7, pp. 3582-3-4-5-6.)

The documentary evidence in the cause, shows that the method pursued in dividing the profits as above outlined by the testimony of Greene and Gaynor was the method actually pursued, except that the monthly divisions were made by thirds, instead of equal divisions between Greene and Gaynor alone. And it may be added that the documentary evidence shows, that the money used to carry on the work at

Savannah and Fernandina consisted not only of the occasional checks sent down by Greene and Gaynor from their private accounts, which were taken into consideration in their next division of profits, but that the contractors would at the end of each month request Carter, when he was about to pay for the month's work, to break up the payment into two or more disbursing checks for such amounts as they would specify, which Carter would do. (*Post*, p. 519-520.)

Certain of these disbursing checks (usually the very much smaller amount) would be deposited in the local banks at Savannah and Fernandina for disbursement there for carrying on the work or applied to the payment of the very large salary compensation allowed to the younger Gaynors. The other disbursing checks would be deposited to the credit of one of the contractors in New York and divided up as regularly as the monthly payments were made, as the profits. (*Post*, pp. 520, 529, 530.)

The documentary evidence also shows that occasionally when they deposited in the local banks a little more than was needed for the work, they would transfer the excess by a check from the local bank to the credit of the contractors in a New York bank, and the amount so transferred was treated as profits. (*Post*, pp. 601, 605, 639.)

A little consideration will make it apparent that the method adopted by Greene and Gaynor is a fairly accurate way of determining what were the profits. It merely means that they deducted from the amount of the disbursing checks paid to them each month as payments were made, all the expenditures on the work and divided up the balance as profits. By doing it monthly as disbursing checks were received, they were able to divide the spoils, fairly between themselves, and whomever the third partner was, without the danger of keeping account books.

The documentary evidence enables us however to arrive at exactly what they did.

The amount of the proceeds of disbursing checks issued September 16, 1892, to May 12, 1896, to the contractors which were divided by thirds in New York as profits, is arrived at as follows:

Aggregate of disbursing checks issued during said period which have first bank endorsement in New York, taken from Exhibits 225, 227 and 197 (Shields), Vol. 31 and which entered into the divisions between B. D. Greene, John F. Gaynor and the third person as shown on Exhibit 319, Vol. 30			$1,942,738.13
Amounts withdrawn in personal checks during said period from New York by Greene and Gaynor for payment to the younger Gaynors or on account of transfers to local banks at Savannah and which did not enter into the divisions:			
Post page 645	$ 4,500.		
Post page 661	5,000.		
Post page 702	81,146.39		
Post page 706	34,850.		
Post page 751	5,494.87		
Post page 782	6,000.	136,991.26	
Amounts transferred during said period by Greene and Gaynor from deposits in local banks at Savannah by checks deposited in N. Y. banks which did enter into the division as profits:			
Post page 601	$ 5,261.46		
Post page 605	194.89		
Post page 639	4,718.40	10,174.75	
Net amount transferred from New York which did not enter into the divisions as profits		$126,816.51	126,816.51
Total amount divided between Greene & Gaynor and the third person, as profits between Sept. 16, '92, and May 12, '96			$1,815,941.62

The total disbursements made by Carter on the Greene & Gaynor jetty contracts covering the period from September 16, 1892, to May 12, 1896, is shown by Exhibit 217 (Shields) Vol. 31, to have been:

On contract 4820 of Sep. 16, '92, C. S.	$ 162,245.88
On contract 4960 of Oct. 22, '92, S. H.	2,110,869.46
On contract 4963 of Oct. 24, '92, Augusta	9,421.68
On contract 5133 of Dec. 20, '92, Altamaha	11,840.95
On contract 5127 of Dec. 20, '92, Darien	23,433.98
On contract 5253 of Mch. 1, '93, Jekyl Creek	21,495.78
On contract 5254 of Mch. 20, '93, Brunswick	16,426.93
On contract 5811 of Nov. 15, '94, C. S.	159,097.10
On contract 6049 of Apl. 20, '95, Jekyl Creek	45,590.13
On certain extra work payments during same period shown on Exhibits 167 to 173	7,071.59
Total payments to the said contractors from Sep. 16, 1892, to May 12, 1896,	$2,567,493.48
Subtract profits divided between Greene, Gaynor and the third person, in New York, as above	$1,815,941.62
Amount received by the contractors not divided as profits in thirds	$751,551.86

What became of the above amount not divided in thirds as profits is accounted for as follows:

The amount of the disbursing checks issued between Sep. 16, '92, and May 12, '96, deposited in local banks in the Savannah district from which disbursements were made on the work taken from Exhibits 226 and 198 (Shields), Vol. 31 is	$586,017.02
The amount of certain disbursing checks during same period, which did not enter into the division of profits by thirds as shown on Exhibit 319, Vol. 30, and which checks are apparently payments to or salary checks to the younger Gaynors, as indicated by Exhibit 329 (Wyman) taken in connection with Exh. 227 (Shields)	38,718.20
Net amount withdrawn by personal checks from New York during said period by Greene & Gaynor for payment to the younger Gaynors or for account of transfers to local banks at Savannah for carrying on the work as above	126,816.64
	$751,551.86

It will thus be seen that during the execution of the series of Greene & Gaynor contracts from September 16, 1892, to May 12, 1896, when the last payments were made on them, the contractors were paid $2,567.493.48, of which amount only $751,551.86 went into the work and into the abnormal salary allowances paid to the two younger Gaynors who acted as local managers, (who during a portion of the time at least received apparently as indicated by the checks, salaries of $1,000 a month) and the balance, to-wit, $1,815,941.62, was divided as profits by B. D. Greene, John F. Gaynor and the third person who we say was Carter, but who the defense now say was R. F. Westcott, who they say gave the proceeds of his third to Carter, without the latter knowing the source from which it was derived.

If we even consider the abnormal payments to the younger Gaynors as being expenditures on the work, still a profit of $1,815,941.62 on an expenditure of $751,551.86 represents a profit on the work of 241 per cent.

It must not be overlooked however that the major portion of the $751,551.86 came from the monthly payments on the contracts made by Carter to the contractors, and it does not represent investment of the private capital of the contractors in the enterprise. The plant which they put into the Atlantic Contracting Company which they organized on August 3, 1892, to do the work was only valued at $26,932.50. (Vol. 23, p. 11229.) The list includes 4 tug boats and other equipment which is stated in detail there. The list of equipment which that company stated it owned September 7, 1896, in its proposals for the 1896 contracts at Savannah (Vol. 21, p.

9787),and at Cumberland Sound (Vol. 21, p. 9792), shows that they had bought only one additional tug boat, the "John F. Gaynor," since August 5, 1892. This tug boat was valued at about $8,000 (Vol. 3, p. 1179), and this and such other additional equipment, such as mules, etc., and repairs and replacement of barges lost appear to have been paid out of the funds not divided in thirds in New York as profits. They did lose some of their barges in the Savannah harbor work in the big storm of August 27, 1893, but they did not lose any of their tug boats during that period. Testimony of Sweeney for defense. (Vol. 25, p. 13061.)

It is thus shown that the contractors made a profit on these contracts in less than four years of $1,815,941.62 on an investment of about $26,932.50.

Fruits of the Fraud.

DIVISION BETWEEN THE CONSPIRATORS.

PRIOR TO 1891 CARTER HAD NOTHING.

Between 1886 and 1890, we find Carter's financial condition somewhat straightened.

Borrowing Money.

On April 15, 1886, we find him borrowing $1,600 from B. D. Greene to raise a mortgage on his father's farm, and paying it back in driblets, the last payment having been made January, 1888. (Shields Vol. 1) p. 276 and *(ante* p. 50).

On September 23, 1888, we found Carter writing to Greene about investing $1,250 or $2,500 in a Paving Construction venture, and saying: "I have nothing to invest just now as my money is tied up at home in Ohio." (*Ante*, p. 62.)

It otherwise appears that the amount he had tied up at home in Ohio was this same $1,600 which he had borrowed from Greene (*ante*, p. 55).

On May 26, 1889, we find Carter writing to B. D. Greene to borrow $2,000 for a Phosphate venture. (*Ante*, p. 71.)

Carter's Salary and Commutation.

Carter's salary and commutation during this perior did not exceed $2,208 per annum, and at no time during his stay at Savannah exceeded $3,032. See Exhibit 323 (Wyman) identified and offered in evidence (Wyman Vol. 1), p. 144. See also U. S. Revised Statutes.

We find him during that period making numerous efforts

to mend his fortune by private ventures with Greene & Gaynor all of which proved abortive.

1885 Pine Lands Project, *ante*, p. 49.

1888 Marble Quarries, *ante*, p. 59.

1889 Air Jack Scheme, *ante*, p. 63.

1888 Great Chili Scheme, *ante*, p. 65.

1888 Cincinnati Railway Terminals, *ante*, p. 68.

1889 Phosphate Enterprise, *ante*, p. 70.

1891 Seaboard Company, *ante*, p. 82.

1891 Adirondacks Extension, *ante*, p. 84.

1891 Orange, N. J. Sewerage Contract, *ante*, p. 93.

These efforts at private ventures seem to have come to a sudden stop in 1891.

The only investment prior to 1891 which remained with him, was an investment July 1st and 3rd, 1890, in 10 shares of Savannah Tow-Boat Company stock, for which he paid $500. (Wyman Vol. 3) p. 1322 and 1325.

CARTER MARRIES AND HIS WIFE DIES.

Carter married October 29, 1890, Margaret Nevin Westcott, daughter of Robert F. Westcott, of New York. His wife died December 7, 1892 (*ante* p. 41).

Westcott's Allowances to Mrs. Carter During Her Life.

After his daughter's marriage to Carter, Mr. Westcott made her a regular allowance of $83.33 per month, with occasionally a small allowance for travelling expenses, or extras. These items appear by Westcott's original checks and accounts in evidence and aggregate up to the last check of October 29, 1892, $2,043.60. See Complainant's Exhibit 608 (Wyman Vol. 3)* p. 1035. Carter admits this statement is correct. (Wyman Vol. 3) p. 1030.

R. F. Westcott testified (Shields Vol. 2) p. 1322, that he had

P. 514. Note

*Westcott also testified that he made his daughter after his marriage a monthly allowance which he sent to her by check. (Vol. 24, p. 11299.)

The exact amounts so sent are shown by the checks in evidence and exhibits above referred to independent of Westcott's testimony.

agreed to furnish his daughter's house; that his daughter died very suddenly, and there was a balance due, and he handed it to Carter afterwards; that he thinks that balance might have been a little over $2,000; that he may have given Carter a few small amounts on holidays, and that was all he ever gave him.

He testified (Shields Vol. 2) p. 807, that the aggregate of all the amounts he ever gave to Mrs. Carter after her marriage and to Carter, might have been $5,000 or $6,000.

While this evidence may not be competent to prove the substantive fact that he did not give Carter more, we think it admissible for the purpose of notice to L. D. and I. S. Carter (*ante*, p. 17).

The substantive fact of this gift, and its exact amount, $2,500, is admitted by Carter in his testimony (Wyman Vol. 2), p. 120-121, and is represented by a deposit in Carter's account in the Union Trust Co. of a check of Van de Venter, $2,625, made up of $2,500 and $125, of coupons from General Electric bonds. And it appears also Carter's check stub-book, Complainant's Exhibit 61 (Shields) from Box B 31.

The Government contends that these are substantially all the gifts ever given by Mr. Westcott to Carter, and that none of the large amounts hereinafter traced into Carter's possession, which he contends were gifts from Mr. Westcott, were in fact such.

CARTER'S FINANCIAL CONDITION PRIOR TO 1891, AS STATED BY HIMSELF.

(Wyman Vol. 3) p. 1006:

"*Cross-Examination resumed by Mr. Erwin.*

Q. I call your attention, Captain Carter, to your testimony on April 9, 1898, before the Court Martial, on page 3914 of the Court Martial record, as follows:

'Prior to your marriage what were the sources of your

income? A Solely from what work I did outside, and from my salary. Q. And did you live within your means? A. I did. Q. Did you derive any income from any other source that your salary and such engineering work as you were paid for, prior to your marriage, I mean? A. No, except a little bit that I may have received from home; that is all.'

That is your testimony at that time?

A. It is, yes.

P5936 Q. And, again, under date of April 16, 1898, on page 4407, you testified as follows:

'Q. Up to the time of your marriage, you lived within your official income? A. I think I did. I do not think I had any debts.'

That was your testimony, wasn't it?

A. That is true.

Q. A little lower down on the same page, near the bottom:

'Q. You were never after that time self-supporting, were you? A. So far as I was personally concerned I think I was; but so far as my family was concerned, I don't believe I was. Q. You were self-supporting then in the years 1893, 1894, 1895, 1896 and 1897? A. That depends on what you mean 'self-supporting.' If you mean that I did not expend more than the salary that I received from the United States during those years, then I was not, because I did expend more than the salary I received from the United States in those years. Q. What other source of income had you? A. I had my father-in-law, and some little things which I had inherited through my wife direct; and some things I had saved, either out of my pay, or through my professional services; and I don't remember whether anything else or not. I think not, except I may have received a small sum from home, after my father's death. Q. How large a sum? A. It was not very great. Q. Was it a thousand dollars? A. Yes, it was more than a thousand dollars; it was small. Q. How much was it? A. I think you have all of those records. Q. I have not a single record upon that point that I know of. You certainly must remember that. A. I cannot remember the exact detail; my sister was dead—I cannot tell how we divided it up, I don't remember just now; I know that I took it all and gave it back some years later.'

That was your testimony before the Court Martial, was it not?

A. That is part of my testimony.

Q. It is quoted correctly?

A. What you have quoted is quoted correctly, but you just took, just pick out extracts; I mean to say you did not quote all, but what you have quoted is correctly quoted.

Q. There are a lot of other details there, but I am confining myself to the particular points. Do you want to add anything to that?

A. I think you quoted: 'Up to the time of your marriage, you lived within your official income? A. I think I did. I do not think I had any debts.' You stopped there, but it goes on: 'Q. And managed to lay aside something, some stock? A. Yes, sir, I laid aside something. I beg your pardon, I did not live entirely within my official income. I was consulting engineers of some corporations; I don't remember the exact amount that I derived from this source. Q. You added to your pay as an army officer some money earned professionally? A. In any legitimate way I thought I could.'

You omitted that.

Mr. Erwin: Well, that is all right.

Q. I will ask you, Captain, what you referred to there in that part of the testimony which I quoted, where you say: 'Except I may have received a small sum from home after my father's death,' and so on; and then you say: 'I think you have all the records.' Do you refer there to this record of this account which you rendered I. Stanton Carter as administrator of your father's estate in 1889, and the debts which were due you by the estate and which he paid you?

A. I do not think I did, specificially, Mr. Erwin, because I do not think I remembered what I did receive or what I received it for. I had a vague recollection I had received something.

Q. That is what you received, isn't it?

A. I received that but whether I received anything else or not I do not now recall.

Q. Whatever you received you gave back?

A. Oh, I gave back much more than I ever received to my family afterwards.

Q. I call your attention to the questions propounded

to you, and your answers on September 24, 1897, before the Board of Inquiry at page 351, as follows:

'Q. How much money has Mr. Westcott turned over to you since January, 1891? A. That is pretty hard for me to say. Q. Can you approximate it? A. He turned over to me all that I have spent during that time, except what my salary was, then he has turned over some things to me which made investments for me. Q. Where did he get the money to make those investments? A. I don't know how he got the money; he had the money; I don't know where he made it, I suppose in the various corporations; I don't know the source, because he had this money when I first knew him.'

That was your statement before the Board of Inquiry, was it not?

A. That is correct as far as it goes.

Q. I call your attention to your testimony before the Board of Inquiry on September 23, 1897, at page 275, as follows:

'Q. Is your mother living now? A. Yes, sir. Q. Have you charge of the estate? A. Unfortunately there is not very much estate; I have charge of what there is, yes, sir. Q. Are you trustee for the estate? A. My mother has no estate at all. I take care of her the best I can.'

That was your testimony before the Board of Inquiry, was it not, Captain?

A. Yes, sir, that is true, as far as it goes."

DOCUMENTARY EVIDENCE OF FINANCIAL TRANSACTIONS.

CARTER'S DISBURSING CHECKS.

Carter as Disbursing Officer, kept the public funds intrusted to him for payment of contractors and other disbursements which were made by him for the Savannah District, on deposit and subject to his check as such disbursing officer in two places.

(a) With the Assistant Treasurer of the United States in the Sub-Treasury at New York.

(b) With the Merchants National Bank of Savannah, a National depository.

The original disbursing checks drawn by the disbursing officer and given to contractors and others, are never returned to the officer, and therefore all of Carter's disbursing checks, with the original endorsements thereon, and showing their final payment, were accessible as evidence in this case.

The contractors were usually paid by Carter each month when he was in funds on the estimates for work for the preceding month, reserving 10 per cent. each month, until the completion of the contract. When he was not in funds, the payments would be made in bulk at the end of the contract or when an appropriation had supplied the funds.

Checks Issued in Two Batches.

An examination of the original monthly vouchers filed with Carter by the contractors, and the entry thereon of the checks issued by Carter therefor, as well as Carter's official check stub books. (See Exhibits 167 to 173 and 216 Shields), showing that Carter did not usually issue one check for the

whole amount due for that payment, but usually issued two batches of checks aggregating the amount of the payment to be made to the contractor for that month.*

(1) One batch of these cehcks is shown by the endorsement on the checks to have been deposited in the local banks at Savannah or Fernandina in which funds were kept by the contractors from which disbursements were made to carry on the work.

(2) Another batch of these checks for much larger sums is shown by the endorsement on the checks to have been deposited first in some bank in New York or to have been cashed by the contractors at the Sub-Treasury, and the checks or proceeds are shown by the bank accounts in evidence to have gone to the credit of B. D. Greene or John F. Gaynor or to the credit of some account under their control.

(3) There are certain other of these disbursing checks of smaller amounts which were deposited in Boston, bearing the endorsement of the younger Gaynors, or which from being withheld from deposit for a considerable time appear to have been treated differently from those mentioned in (2) above, and which do not appear to have gone to the credit of B. D. Greene or John F. Gaynor.

Identification of Disbursing Checks.

All of Carter's disbursing checks issued for jetty contracts from the beginning of 1892 to 1897, inclusive, were produced and put in evidence before Commissioner Shields by the officers of the Sub-Treasury and Merchant's National Bank of Savannah, and lists made of them with the several endorsements thereon. These lists were prepared by entering the checks classified as above on a separate list for convenience of reference. There was a separate list for disbursing checks issued in 1891. The original disbursing checks

P. 520. Note

*Carter testified he issued as many checks at the request of the contractors and in amounts as they wanted them. (Vol. 13, p. 5886.)

in evidence described on these lists are held subject to the inspection of the court.

List of Disbursing Checks Identified by Mr. Kain.

Mr. Francis Kain, Chief Clerk of the Sub-Treasury New York, verified the following lists marked with Exhibit numbers and produced and identified Carter's original disbursing checks described therein. (Shields Vol. 1) p. 634-5-6:

Exhibit 225 (Shields) (years 1892 to 1897).

List of Disbursing Checks issued to contractors by O. M. Carter drawn on the Assistant Treasurer of the United States, New York, on which the first bank indorsement is at New York. (Class 2 above.)

Exhibit 226 (Shields) (years 1892 to 1897).

List of Disbursing Checks issued to contractors by O. M. Carter drawn on the Assistant Treasurer of the United States, New York, on which the first bank indorsement is at Savannah, Ga., Fernandina, Fla., and Brunswick, Ga. (Class 1 above.)

Exhibit 227 (Shields) (years 1892 to 1897).

List of certain Disbursing Checks issued to contractors by O. M. Carter, drawn on the Assistant Treasurer of the United States, New York. (Class 3 above.)

A more complete statement of the way in which the checks on this list were handled is shown on Exhibit 329 (Wyman) prepared from the checks by Mr. E. I. Johnson, offered in evidence (Wyman Vol. 1), p. 86 and copied (Wyman Vol. 1), p. 326.

Exhibit 227 (Shields) (year 1895).

List of Disbursing Checks issued to contractors by George W. Goethals, drawn on the Assistant Treasurer of the United States, New York. (Class 2 above.)

(Captain George W. Goethals disbursed for Carter during August and September, 1895, while Carter made a trip to Europe but Goethals remained in Washington, *ante*, p. 44.)

Mr. Francis Kain, also verified the following list marked with Exhibit number and produced and identified Carter's disbursing checks described therein (Shields Vol. 2), p. 943-4. Vol 2 of 1134-5-6

Vol 31 Exhibit 285 (Shields) (year 1891).

List of certain Disbursing Checks issued to contractors by O. M. Carter, drawn on Assistant Treasurer of the United States, New York.

Lists of Disbursing Checks Identified by Mr. Morris.

Mr. John Morris, bookkeeper of the Merchants National Bank of Savannah, verified the following lists marked with exhibit numbers, and produced and identified Carter's original disbursing checks described therein (Shields Vol. 1), p. 555-6: Vol 3 of 1092-3-4

Vol. 31 Exhibit 197 (Shields) (years 1892 to 1897).

List of Disbursing Checks issued to contractors by O. M. Carter, drawn on Merchants National Bank, Savannah, Ga., on which the first bank indorsement is at New York. (Class 2 above.)

Vol 31 Exhibit 198 (Shields) (years 1892 to 1897).

List of Disbursing Checks issued to contractors by O. M. Carter, drawn on Merchants National Bank, Savannah, Ga., on which the first bank indorsement is at Savannah, Ga.

The original disbursing checks on all these lists are in evidence subject to the inspection of the court.

ACCOUNTS IN EVIDENCE.

The Government has introduced in evidence certain bank accounts verified by the bookkeepers and accountants of the different banks, and as far as obtainable the original deposit tickets for deposits represented in the accounts, among others, the following:

B. D. GREENE'S NEW YORK BANK ACCOUNTS.

Exhibit 235 (Shields.

Entries on books of Knickerbocker Trust Company of New York, of certain debits to account of B. D. Greene, with checks and charge tickets accompanying. Verified by Orrin R. Judd, accountant in charge of books of said bank, and offered in evidence (Shields Vol. 1), p. 654, 659.

Exhibit 236 (Shields).

Entries on books of Knickerbocker Trust Company, of New York, of certain credits to account of B. D. Greene, with credit slips and deposit tickets accompanying. Verified by said Orrin R. Judd, and offered in evidence (Shields Vol. 1), p. 656, 659.

Exhibit 237 (Shields).

Letter record of purchase by Knickerbocker Trust Company, of certain U. S. bonds for account of B. D. Greene, verified by said Orrin R. Judd and offered in evidence (Shields Vol. 1), p. 657, 659, copied (Shields Vol. 3), p. 2308.

Exhibit 330—O. O. O. (Wyman).

Statement of account of B. D. Greene with Knickerbocker Trust Company, of New York, from September 20, 1895, to January 3, 1898, furnished by Captain Carter to the Attorney-General. Verified by Mr. E. L. Johnson and offered in evidence. (Wyman Vol. 1), p. 76.

Exhibit 240 (Shields).

Entries on books of the American Exchange National Bank, New York, of certain credits to account of B. D.

Greene. Verified by Mr. A. K. deGuiscard, Supervising Accountant, of said bank, and offered in evidence (Shields Vol. 1), p. 673, 682. Vol. 23 G11071-11080

Exhibit 241 (Shields). Vol 31

Entries on books of the American Exchange National Bank of New York, of certain credits to account of B. D. Greene. Verified by said deGuiscard and offered in evidence (Shields Vol. 1), p. 674, 682. Vol 23 G11072-11080

Exhibit 242 (Shields). Vol. 31

Certain checks of B. D. Green, paid by the American Exchange National Bank of New York, as shown by entries on the books of said bank. Verified by said deGuiscard and offered in evidence (Shields Vol. 1), p. 674, 682. Vol. 23 G11072-11080

Exhibit 434 (Parsons). Vol. 28

Account of B. D. Greene in American Exchange National Bank of New York for months of September, 1891, April, 1894, and December, 1894. Verified by A. K. deGuiscard, Supervising Accountant of said bank and offered in evidence (Parsons Record Vol. 2), p. 81 and 168. Vol 10 G4655

Exhibit 330 and 330-A to 330-NNN (Wyman). Vol 29

Statement of account of B. D. Greene with American Exchange National Bank of New York, from January 1, 1891, to May 1897, inclusive, except months of September, 1891 and April and December 1894, furnished by Captain Carter to the Attorney-General. Verified by Mr. E. I. Johnson and offered in evidence (Wyman Vol. 1), p. 76. Vol 11 G5.50-1

JOHN F. GAYNOR'S NEW YORK BANK ACCOUNTS.

Exhibit 243 (Shields). Vol 31

Entries on books of the American Exchange National Bank, New York, of certain credits to account of John F. Gaynor. Verified by A. K. deGuiscard, Supervising Accountant, of said bank, and offered in evidence (Shields Vol. 1), p. 675-682. Vol 23 G11073-11080

Exhibit 244 (Shields). Vol 31

Entries on books of the American Exchange National Bank, New York, of certain credits to account of John F. Gaynor. Verified by said A. K. Guiscard, and offered in evidence (Shields Vol. 1), p. 676-682. Vol 23 11074-11080

Exhibit 245 (Shields). Vol 31

Certain checks of John F. Gaynor, paid by the American Exchange National Bank, New York, as shown by entries on the books of said bank. Verified by said deGuiscard and offered in evidence (Shields Vol. 1), p. 676-682. Vol 23 11074-11080

Exhibit 593 (Wyman). Vol 29

Full account of John F. Gaynor, with American Exchange National Bank of New York, May 17, 1892, to May 28, 1897. Verified by said A. K. deGuiscard and offered in evidence (Wyman Vol. 1), p. 83. Vol 11 5156

This account Exhibit 593, is bound in Wyman Vol. 12 Vol 12 of Exhibits, Binder B.

WM. T. GAYNOR'S NEW YORK BANK ACCOUNT.

(*The Blind Account.*)

Exhibit 246 (Shields). Vol 31

Entries on books of the American Exchange National Bank of New York, of certain credits to account of Wm. T. Gaynor. Verified by Mr. A. K. deGuiscard, supervising accountant, of said bank, and offered in evidence (Shields Vol. 1), p. 677-682. Vol 23 11075-11080

Exhibit 247 (Shields). Vol 31

Entries on books of the American Exchange National Bank of New York, of certain credits to account of Wm. T. Gaynor. Verified by said deGuiscard and offered in evidence (Shields Vol. 1), p. 677-682. Vol 23 11076 11080

Exhibit 248 (Shields). Vol 31

Certain checks of Wm. T. Gaynor, paid by the American Exchange National Bank of New York, as shown by entries on the books of said bank. Verified by said deGuiscard and offered in evidence (Shields Vol. 1), p. 678-682. Vol 23 11076 11080

The W. T. Gaynor and John F. Gaynor Accounts Used as One Account.

Mr. A. K. deGuiscard, Supervising Accountant of the American Exchange National Bank of New York, produced and identified an original entry in ledger of 1895, carried through the succeeding ledgers of that bank, showing that the account of John F. Gaynor and Wm. T. Gaynor were treated by the bank practically as one account. By agreement (Wyman Vol. 9), p. 4617, the entry from the ledgers was read into the record (Wyman Vol. 9), p. 4616, and was as follows:

"*Special Instructions.*"

"J. F. Gaynor. In case of overdrafts on account of the account of John F. Gaynor, charge his checks to W. T. Gaynor. See letter W. T. G. June 17, in possession of Mr. Burns."

Mr. deGuiscard testified (Wyman Vol. 9), p. 4618:

"Q. *Mr. deGuiscard*, in an entry like that on the ledger, the balances in there, if it was a check drawn I mean on the John F. Gaynor account, if it was a greater amount than the balance in bank, if it was not greater than the balance in the W. T. Gaynor account, it would still be paid and charged to the John F. Gaynor account would it not?

A. It would be."

That the W. T. Gaynor account in the American Exchange National Bank had been used as a side account by the contractors prior to 1895, also appears by the entries as to the $81,000 borrowed in the account of W. T. Gaynor in 1894 for carrying on the work, and its payment by the individual check of B. D. Greene and a Government disbursing check.

See Exhibit 319 (Shields) Division 17.

B. D. Greene called as a witness for the defense, testified (Court Martial Vol. 17), p. 3797:

That John F. Gaynor and himself were the sole stockholders of the Atlantic Contracting Company, each owning a half interest, and that W. T. Gaynor was not interested except that a few shares were put in his name for purpose of organizing the company.

John F. Gaynor made a statement to like effect (Board Record Vol. 3), p. 864.

See also the list of stockholders in the charter (Shields Vol. 1), p. 631.

CERTAIN DISBURSING CHECKS PASSED THROUGH THE AMERICAN EXCHANGE NATIONAL BANK OF NEW YORK.

Exhibit 249 and 249-A and B. (Shields).

List of certain disbursing checks of O. M. Carter, in favor of contractors which bear the stamp of the American Exchange National Bank, or bear the endorsements of the officers of said bank, but which checks in their entirety were not passed to the credit of any individual account together with entries on books of the bank and corresponding credit tickets, showing disposition of same. Verified by Mr. A. K. deGuiscard, Supervising Accountant of said bank and offered in evidence (Shields Vol. 1), p. 680-682.

SAVANNAH BANK ACCOUNT OF J. F. GAYNOR.

Exhibit 199 (Shields) (year 1893).

Certain checks paid by Savannah Bank and Trust Company for account of John F. Gaynor. Verified by John O. Gorman, bookkeeper of said bank, and offered in evidence. (Shields Vol. 1) p. 558-9.

Disbursements for Cumberland Sound Work, 1896 Contract

Exhibit 200 (Shields) (years 1896 to 1898).

List of debits to account of W. T. Gaynor with the First National Bank of Fernandina, Fla., with checks accompanying. Verified by Frederick W. Hoyt, President of said bank, and offered in evidence (Shields Vol. 1), p. 562-569.

Exhibit 201 (Shields) (years 1896 to 1898).

List of credits to account of W. T. Gaynor with the First National Bank of Fernandina, Fla. Verified by said Hoyt, and offered in evidence (Shields Vol. 1), p. 564-569.

Exhibit 202 (Shields).

List of exchanges received by First National Bank of Fernandina, deposited in account of W. T. Gaynor. Verified by said Hoyt, and offered in evidence (Shields Vol. 1), p. 565-569.

Exhibit 203 (Shields).

Recapitulation aggregating debit items on Exhibit 200, from November 24, 1896, to June 30, 1897. Verified by said Hoyt and offered in evidence (Shields Vol. 1), p. 572.

Exhibit 204 (Shields).

Recapitulation, aggregating debit items on Exhibit 200, from July 1, 1897, to May 7, 1898. Verified by said Hoyt and offered in evidence (Shields Vol. 1), p. 572.

Wm. T. Gaynor was in charge for the contractors of the work at Cumberland under the 1896 contract. Testimony of Cooper (Shields Vol. 1), pp. 509-10. Affidavit of W. T. Gaynor of Oct. 28, 1897, filed by Carter before Board of Officers (Envelope G). The account itself, and the testimony of Mr.

Hoyt (Shields Vol. 1), p. 568, shows that this account in the First National Bank of Fernandina, kept in the name of W. T. Gaynor, was the account through which the Atlantic Contracting Co. made the disbursements on pay-rolls, etc., for carrying on the 1896 contract at Cumberland Sound.

ACCOUNTS OF E. H. GAYNOR, TREASURER, SAVANNAH BANK.

Exhibit 206 (Shields) (Oct. 10, 1896, to June 30, 1897).

List of all credits in account of E. H. Gaynor, Treasurer, with the Southern Bank of the State of Georgia, Savannah, Ga.. with accompanying deposit tickets, Exhibits 206 A. B. C. Verified by Mr. D. K. Catherwood, bookkeeper of said bank, and offered in evidence (Shields Vol. 1), pp. 578, 585, 586.

ACCOUNT OF W. T. GAYNOR, SAVANNAH BANKS.

Exhibit 207 (Shields) (Oct. 22, 1896, to May 3, 1897).

List of checks charged in account of W. T. Gaynor, in the Southern Bank of the State of Georgia, Savannah, Ga. Verified by D. K. Catherwood, bookkeeper of said bank, and offered in evidence (Shields Vol. 1), pp. 579, 585.

Exhibits 208 and 208A (Shields) (Oct. 22, 1896, to May 3, 1897).

List of credits in account W. T. Gaynor with Southern Bank of the State of Georgia, Savannah, Ga., with accompanying deposit tickets. Verified by said D. K. Catherwood and offered in evidence. (Shields Vol. 1), pp. 580-585.

Exhibit 209 (Shields) (Oct. 10, 1896, to June 30, 1897).

Recapitulation aggregating debits in accounts of E. H. Gaynor, Treasurer, and W. T. Gaynor, with Southern Bank, State of Georgia, Savannah, Ga., from Oct. 10, 1896, to June 30, 1897. Verified by said D. K. Catherwood and offered in evidence. (Shields Vol. 1), pp. 580-585.

Exhibit 210 (Shields) (July 1, 1897, to Feb. 18, 1898). Vol 31

List of all checks charged to account of E. H. Gaynor, Treasurer, in account with Southern Bank of the State of Georgia, Savannah, Ga. Verified by said D. K. Catherwood and offered in evidence (Shields Vol. 1), pp. 581-585. Vol 23 P 10979-10985

Exhibit 211 (Shields). Vol 31

Recapitulation aggregating all debits in the accounts of E. H. Gaynor, Treasurer, with the Southern Bank of the State of Georgia, Savannah, Ga., from July 1, 1897, to Feb. 18, 1898, verified by said D. K. Catherwood and offered in evidence (Shields Vol. 1), pp. 581-585. Vol 23 P

Exhibits 212 and 212A and B (Shields) (July 1, 1897, to Feb. 18, 1898). Vol 31

List of all credits in account of E. H. Gaynor, Treasurer, with Southern Bank of the State of Georgia, Savannah, Ga., with accompanying deposit tickets. Verified by said D. K. Catherwood and offered in evidence (Shields), pp. 583-585. Vol 23 P 10981-10983

Exhibit 213 (Shields) (Aug. 25, 1893, to Sept. 15, 1894) Vol 31

List of entries on bank books of the Southern Bank of the State of Georgia, of certain checks on New York banks, deposited to the credit of E. H. Gaynor, Treasurer. Verified by said D. K. Catherwood and offered in evidence (Shields Vol. 1), pp. 583-585. Vol 23 P 10981-10983

Exhibit 214 (Shields) (April 2, 1894, to Sept. 1, 1894). Vol 31

List of entries on bank books of the Southern Bank of the State of Georgia, Savannah, Ga., of certain checks on New York banks, deposited to the credit of W. T. Gaynor. Verified by said D. K. Catherwood and offered in evidence (Shields Vol. 1), pp. 584-585. Vol 23 P 10982-3

Exhibit 215 (Shields) (March 28, 1896). Vol 31

List of entries on bank books of the Southern Bank of the State of Georgia, Savannah, Ga., of certain checks on New York banks, deposited to the credit of account of E. H. Gaynor, March 28, 1896.

Verified said D. K. Catherwood and offered in evidence Vol. 23 P 10982-3

Edward H. Gaynor was Treasurer of the Atlantic Contracting Co., and manager of the work under the 1896 contract at Savannah Harbor. And W. T. Gaynor was manager at Savannah Harbor under a part of that contract until he went to Cumberland Sound and took charge there.

Testimony of Cooper (Shields Vol. 1), pp. 509-10.

Testimony of Gallagher (Shields Vol. 1), pp. 599-600.

W. T. Gaynor and E. H. Gaynor were the superintendents of the work under numerous other preceding contracts of Greene & Gaynor in the District. (See references under contracts) (*ante*, p. 106 *et seq*).

Under the 1892 contract at Savannah Harbor, John F. Gaynor was in charge of the local office of the Atlantic Contracting Co., at Savannah, Ga., and kept the company's funds in The Savannah Bank & Trust Co. Then E. H. Gaynor took charge, and kept the account in the same bank for a while, and then transferred it to the Southern Bank of the State of Georgia, Savannah, Ga. Testimony of J. L. Gallagher, bookkeeper of Atlantic Contracting Co. (Shields Vol. 1) p. 600.

After the 1896 contract work at Savannah Harbor was commenced, all the funds for that work were disbursed by checks of either E. H. Gaynor, Treasurer or of W. T. Gaynor, on the Southern Bank of the State of Georgia, Savannah, Ga. Testimony of J. L. Gallagher, bookkeeper of Atlantic Contracting Co. (Shields Vol. 1), p. 600.

O. M. CARTER'S PERSONAL ACCOUNTS IN NEW YORK BANKS.

Exhibit 251 (Shields) (Dec. 18, 1891, to Sept. 29, 1897) Vol. 3

Entries on the books of the Union Trust Co., New York, and corresponding deposit tickets showing certain credits to account of O. M. Carter. Verified by Tylee W. Hartshorne, general bookkeeper of said bank, and offered in evidence. (Shields Vol. 1) pp. 691-697. Vol. 23 P 11089

Exhibit 252 (Shields). Vol 31

Entries on books of the Union Trust Company of New York, of certain debits to account of O. M. Carter, with checks accompanying. Verified by said Tylee W. Hartshorne, and offered in evidence. (Shields Vol. 1) pp. 692-697. Vol 23 P 11089-11095

Exhibits 362 to 379 (Court Martial) (Oct. 19, 1891, to Oct. 2, 1897). Vol 27

Bank statements of O. M. Carter's accounts in the Union Trust Company, New York, of which Exhibit 362 to 378 inclusive, found in Carter's file case by the Board of Officers, and Exhibit 379, furnished the Board by Carter. Verified by testimony of Major Henry M. Adams, member of the Board (Court Martial Vol. 9), p. 2041, and (Vol. 10) p. 2104, and (Court Martial Vol. 9) p. 2063.

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O. M. CARTER'S NEW YORK BANK CHECKS, AND CHECK-STUB BOOKS, OF PERSONAL ACCOUNT.

Exhibits 59 to 66 inclusive (Shields) (Oct. 19, 1891, to Dec. 30, 1895). Vol 31

There was found in Carter's File case, and transferred to Box B 31, eight check-stub books, kept in Carter's own handwriting, of his transactions with the Union Trust Company of New York. These were before the Board of Inquiry, also before the Court Martial, and also be-

fore Commissioner Shields. We refer to them above by the Exhibits numbers given them in the Shields' hearing.

Verified by testimony of Major Chas. McClure (Shields Vol. 1), p. 541.

Verified by testimony of Colonel Thos. F. Barr (Shields Vol. 1), p. 547.

Verified by testimony of E. I. Johnson (Wyman Vol 1), pp. 19-20.

Carter's check-stub book for Union Trust Company account subsequent to Dec. 30, 1895, is missing and was not produced by him.

There was found in Carter's File Case and transferred to Box B 31, all of Carter's original cancelled checks on his personal account with the Union Trust Company of New York, covering the period from January 6, 1893, to April 29, 1897. These checks are all specifically described and identified in Exhibits 252, Shields, and 294 and 538, Wyman.

Carter's cancelled checks subsequent to April 29, 1897, are missing and were not produced by Carter.

The Missing Stub-Book and Checks.

The Government contends that the missing stub-book and checks were suppressed by Carter.

On the other hand Carter charges that they were in his File Case when he left Savannah, and were suppressed by the Judge Advocate at the Court Martial.

(Wyman Vol. 3) p. 1517:

"Mr. Erwin: Before we get through with this case, we are going to demonstrate that Captain Carter had those checks and the stub books in his possession after the time you state.

Mr. Stone: We are going to demonstrate that the Board of Engineers had them.

Mr. Erwin: All right.

Mr. Stone: And we are going to demonstrate that somebody has destroyed them because they would have been useful to Captain Carter.

Mr. Erwin: I do not know that anybody ever did that.

Mr. Stone: It was those rascals Barr and McClure, there was not an honest hair in their heads, and the records show that these fellows got away with everything favorable to Captain Carter and left him everything unfavorable; I do not say you did it, but I say those fellows did; and we would like to have those papers accounted for.

Mr. Erwin: We will account for them and demonstrate that Captain Carter has had them in his possession since."

The Stub-Book Missing at the Board Hearing.

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Carter testified on cross-examination (Wyman Vol. 3), p. 1756:

"By Mr. Erwin:

"Q. I call your attention to your testimony before the Board of Inquiry, October 27, 1897, page 848:

(Major Adams.) 'Q. You have expressed a desire to me to explain all matters relating to your own bank account, to the bank account of R. F. Westcott in which you acted as attorney, and also the matter of your purchases with the different brokers. In accordance with that a letter was written to you October 20th, 1897, asking for five different papers. You have furnished three of them; two you have not furnished. The ones you have not furnished, are, first, your personal check book on the Union Trust Company from January 1, 1896, to date, and second, the pass book of R. F. Westcott showing a transfer of $45,648.65, June 5th to statement account. Can you furnish those? A. I have not been able to find either one of them. As I said to you the other day I supposed my personal check book was in my posses-

sion. I have looked and found it is not. I then went to the Union Trust Company and asked to look at my cancelled checks to see whether or not any checks from that book have been put in there since I was in the North and I found that none had, that the few checks that I drew since then were drawn on loose sheets, so I infer that I must have left that book in Savannah with my other check books. Q. It is not with your check books? A. It is not. Now, of course, I have about 100 boxes in the course of my professional career, and it may have been that they were packed in there by Mr. Brown by mistake, but it seems quite improbable because my private affairs were usually kept in a desk and were packed by him into one or two places.'

Mr. Stone: That is the check stub-book you have not produced, isn't it, Mr. Erwin?

Q. (Continuing.) That is a check stub-book that your statement to the Board of Inquiry shows was not there, and I am calling your attention to the fact that the testimony shows that it was not there at that time.

Mr. Stone: Somebody has got away with it, then, since.

Q. (Continuing.) You stated you were going to show it was at the Board of Inquiry?

A. I can show it to you.

Q. The record shows it was not.

A. I can show it if you want me to.

Mr. Stone: Put it in the record.

Captain Carter: That was in New York

Mr. Stone: What was?

Captain Carter: What Mr. Erwin just read, on October 27, 1897.

Mr. Erwin: That is correct.

Captain Carter: I find at Savannah, September 24, 1897, a little over a month before something which *seems to indicate* that the check book was in the possession of the Board, because I find from the record at the bottom of page 265:

'December 9, 1896, check was drawn in favor of B. D. Greene for $1,000.00. What was that for? A. To give to "E. M. T." It was a lady to whom I wanted to give that. I can give you her name and address if you want it. She is now in this country, she was then, I think, in Paris.'

That is the end of the quotation. From that quotation 'E. M. T.' *there must have been something produced* to give me that quotation; I do not see what it can be unless it was the check or the check stub, but a month later it appears that book was not there."

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Page 1760:

"Mr. Erwin: There are certain checks in, up to a certain period, certain checks found in the file case and now in box B-31, and included only the checks running up to a certain date, as has already been stated in the evidence.

Captain Carter: Could I see that?

Mr. Stone: April, 1897.

Mr. Erwin: April, 1897. Beyond April, 1897, your checks are not in evidence, they were missing at the Board of Inquiry, they were missing at the court martial and have not been produced by you.

Captain Carter. This was a question, as I understand it about my check book for December, 1896, and on the record at page 365 there is quoted 'E. M. T.,' furnished from something, either the check or the check stub, and I say if you will produce the check and there is no 'E. M. T.' on that check, then it must have been that the Board had the book at that time.

Mr. Erwin: It was in *your* answer. The Board did not call out the 'E. M. T.'

Captain Carter: No; but I must have had something before me.

Q. (Mr. Erwin.) *You* stated the 'E. M. T.' But you nowhere state who E. M. T. was in your testimony, you follow it immediately by saying it was to a lady; it does not appear—

A. I did not there, but Col. Barr was very curious and wanted to know who the lady was so he might meet her.

Q. The point is, this was a check of $1,000, and this testimony at page 365 of the Board of Inquiry at Sa-

vannah was *in relation to a check* given by you to B. D. Greene for $1,000, and they asked you what was that for, it was a question about a check, not a question about any stub entry.

A. That I understand."

Possession Traced to Carter Since Board Hearing.

The Government in rebuttal, offered certain documentary evidence from the Union Trust Co. of New York. Verified by Mr. Tylee W. Hartshorne, supervising bookkeeper of that bank. Exhibit 625, copied (Wyman Vol. 3), p. 1803, and Exhibit 626, copied (Wyman Vol. 3), p. 1809, admitted by agreement with certain statements relative thereto (Wyman Vol. 3), p. 1799 to 1803.

From this documentary evidence it appears:

(1) As to Carter's checks issued subsequent to April 29, 1897:

That on September 7, 1897, The Union Trust Company sent by *Express* to O. M. Carter, Savannah, Ga., 45 cancelled checks, with a statement of his bank account from May 3, 1897, to September 4, 1897.

(2) That this express package was delivered to J. W. O. Sterly, formerly Carter's chief clerk at Savannah, Ga., on September 9, 1897, and on the same day the package was reshipped by him to "Capt. O. M. Carter, Army Building, Whitehall St., New York," in which was the office of the "Nicaragua Canal Commission," of which Carter was a member, and to which place Carter had directed his mail to be forwarded.

It further appears that Carter had established M. A. Connolly, his former stenographer, as a clerk there, and Connolly had met Carter at Quarantine Station on Carter's return to New York, Sept. 10, 1897 (*ante*, p. 24).

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(3) (Wyman Vol. 3) p. 1805:

That on Oct. 22, 1897, The Union Trust Co. delivered to Carter in person, 7 additional of his canceled checks and took Carter's personal receipt (page 1808) therefor as follows:

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"Union Trust Co." New York, Oct. 22, 1891.

"Rec'd 7 cancelled vouchers, in full to date as per statement.

O. M. CARTER."

The Missing Stub-Book.

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(4) (Wyman Vol. 3) p. 1803:

That on December 30, 1895, The Union Trust Co. of New York, sent by Express to O. M. Carter, a new Union Trust Co. check book, containing 252 checks for which they charged him two dollars.

The last check stub-book in evidence, Exhibit 66 (Shields), was used up Dec. 30, 1895.

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It further appears (Wyman Vol. 3), p. 1804; that there had been paid by the Union Trust Co. of Carter's checks:

From December 9, 1895, to May 3, 1897, checks 195.

From May 3, 1897, to Sept. 4, 1897, checks 45.

This shows that the new check-book bought by Carter Dec. 30, 1895, must have had a great many unused checks in it at the time he left Savannah, July 17, 1897, and as he was issuing checks right straight along thereafter, it is unreasonable to suppose that he would have packed away a check book in current use along with his old canceled checks and used up stub-books.

Carter's statement to the Board in October, 1897 (*ante*, p. 535), that he had written all his checks after he left Savannah, July 17, 1897, on loose sheets, is so at variance with his habits as to challenge credence in the light of the above new evidence on the subject.

Refuted by Gen. Barr and Col. McClure.

In rebuttal, General Thos. F. Barr and Colonel Charles McClure, who had charge of Carter's papers at the Court Martial, testified that they did not destroy or suppress any of Carter's papers (Wyman Vol. 9), pp. 4598 and 4620.

CARTER'S ANNOTATED NEW YORK ACCOUNTS.

Exhibit 597 (Wyman) (Oct. 19, 1891, to June 1, 1899).

Bank statements of O. M. Carter accounts from the Union Trust Company, New York, with annotations thereon, made by O. M. Carter, furnished Attorney General John W. Griggs, by O. M. Carter.

Carter's letter of June 20, 1898, transmitting 8 sheets of these statements up to that date to his attorney Wayne MacVeigh, is copied in record (Wyman Vol. 3), p. 1691.

Carter testified (Wyman Vol. 3), p. 1692:

> "Q. Then the other two sheets which embraced accounts of yours with the Union Trust Co. subsequent to the date of that letter, must have been forwarded to him (MacVeigh) afterwards?
>
> A. I must have given those to my attorney at a later date."

Carter testified as to the annotation in his own handwriting on these bank statements (Wyman Vol. 3), p. 1657:

> "Q. (By Mr. Erwin) I have put the questions to Captain Carter, did he not make these pencil memorandums on that account, in undertaking to explain those entries?
>
> A. Mr. Erwin, I made these lead pencil memoranda there for the benefit of my attorney, Mr. Wayne MacVeigh, explaining as far as I could, from memory, everything concerning every item in my check book and from all of the records that I had at the time and from what I could recall at the time, I put it down there as nearly correct as I could."

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Page 1658:

"Q. Did you send it to Mr. Wayne MacVeigh to deliver to the Attorney General?

A. I do not recall; this is a letter from me to my attorney and it does not mention the Attorney General anywhere, so far as I see. I may have done so, because Mr. MacVeigh told me I was being tried by the Attorney General outside of the record; and I explained everything to him I could and he said he would see if he could obtain an opportunity to be heard on our behalf."

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Pages 1693-4: Carter admits that he did send on these and other papers to MacVeigh for the purpose of having them placed before the Attorney General.

It will be noted that these statements of Carter's account in the Union Trust Co., Exhibit 597 (Wyman), are from Oct. 19, 1891, to Oct. 2, 1897, precisely the same as Court Martial Exhibits 362 to 379 (*ante*, p. 532), all of which the Attorney General had before him in reviewing the Court Martial Record. The additional information on these statements put before the Attorney General by Mr. MacVeigh was the two added statements, and Carter's annotations on all the statements undertaking to explain the transactions.

Mr. Edward I. Johnson identified these annotated sheets as being turned over to him as custodian of the papers at the time the Attorney General was reviewing the Court Martial record (Wyman Vol. 3), p. 1674.

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Objections to Admission of these Statements. Attack on the Attorney General.

Before Carter would get on the stand to testify in the present case, his counsel gave Complainant's Solicitor notice to produce everything Complainant's Solicitor controlled in Carter's handwriting. (Wyman Vol. 3) p. 1660. This notice, without specifying any particular papers, was entirely too general to be legal notice, but Complainant's Solicitor did not

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stand on that, but directed all of Captain Carter's writings in the Government's custody opened up to Captain Carter's inspection and Carter spent about one year going over them before he went on the stand.

After Carter had testified before Examiner Wyman, and had presented a theory of defense totally at variance with the statement of the transactions as explained by Carter in these annotations made by Carter in 1899, Complainant's Solicitor on cross-examination presented these sheets, Exhibit 597 Wyman, with Carter's annotations on them, and Carter had to admit they were made in his own handwriting.

The production of these sheets produced a storm of objection:

Wyman Vol. 3, p. 1660:

Captain Carter. "You told Mr. Stone you hadn't anything; he notified you to produce everything you had in my handwriting and you told us you did so.

Mr. Erwin: I did.

Capt. Carter: This is in my handwriting.

Mr. Erwin: I understand we furnished you a copy of this.

Mr. Stone: Oh, no, you did not.

Mr. Erwin: I understand we did furnish you a copy of this.

The Witness: I do not *think* I got it. *I got mine from my attorney, who was Mr. McKenny,* Mr. MacVeigh's partner; I suppose McKenny sent it to me. I know I sent it to my attorney."

(Wyman Vol. 3) page 1652:

Mr. Stone: "Do you claim that the Attorney-General sitting as a Court of Appeal undertook to go outside of the record, on statements of various points, and pass upon the matters before him for review? Is that what you claim?

Mr. Erwin: I do not claim anything; they (the annotated statements) were before the Attorney-General; whether the Attorney General acted on them or not I do not know; I know his (Carter's) counsel furnished

them to the Attorney-General; whether or not it was proper for them to furnish them, I have no idea.

Mr. Stone: The question arises whether the Attorney General tried this case on the record or whether he went outside of the record.

Mr. Erwin: That I do not know, that is for the Attorney-General to answer. I know they (the papers) were furnished to the Attorney-General by counsel for the defendant."

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(Wyman Vol. 3) p. 1655:

Mr. Stone: "I will ask you, Mr. Erwin, if you propose in this case to take advantage of *this infamous scheme of the Attorney-General* when sitting as a Court of Appeal and review to go outside of the record and act upon testimony which was not in the record?

Mr. Erwin: I will state, in answer to that, that I think the Attorney-General acted most magnanimously in furnishing Captain Carter an opportunity to place before him what Captain Carter wanted to place before him, what his counsel wanted to place before him; at their request to put in explanations, without an opportunity to the prosecution to cross-examine in reference to the statement, or to meet it in any way. There is absolutely nothing here in addition to the Court Martial record except these things which Captain Carter and his counsel furnished, at their own suggestion and in order to explain what had not been explained; and if Mr. Griggs is to be denounced for that, why it comes with very poor grace for Captain Carter to make it; when it was done at their request."

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Page 1657:

Mr. Stone: "I will say right on the record, this case ought never to have been handled as it was; the Attorney-General of the United States, who is presumed to know the law, had no right to go outside the record for the benefit of either party, and undertake, when sitting as a Court of Appeal, to go into evidence which was not before the Court below. It is an infamous proceeding; it is a disgrace to everybody connected with it; it ought never to be used in a Court of Justice.

Mr. Erwin: Your tirade against the Attorney-General is entirely uncalled for."

Carter Had Copy of Exhibit 597 But Overlooked the Fact.

Carter testified on cross-examination (Wyman Vol. 3), Vol. 14 p. 6370 p. 1676:

"Q. (By Mr. Erwin.) You have now your copy that Mr. Stone referred to as having been received through Mr. McKenny, who was one of your counsel at the review before the Attorney-General?

A. I have.

Q. You had that in your possession all during this trial?

A. It was furnished me by Mr. McKenny as I recall, in the summer of 1899.

Q. You have had it ever since?

A. I have had it ever since.

Q. Is that any different from this one here, as far as you know, these ten sheets I now hand you?

A. I have no idea.

Mr. Stone: I presume, Mr. Erwin, it is the same; the only question now left is that *Captain Carter supposed the original was in the hands of his Attorney.* You now produce it from your papers, and I claim you ought to have produced it under my notice to produce papers some time ago. There is no dispute that the copy Captain Carter has is a correct copy of these papers, but he did not get that from you or from Mr. Johnson, and he has not seen the originals since they were sent Mr. MacVeigh in 1898.

Mr. Erwin: I want to state right here, that under your notice to produce papers in our possession relating to Captain Carter, I opened up all the records we had here for Captain Carter's inspection, and gave you the copies of very many of them, and gave instructions to Mr. Johnson to give copies and let Captain Carter make copies.

I was away during a few months when he asked to look over the records. These particular ten sheets were blue-printed under my instructions, and I told Mr. Johnson to give Captain Carter a copy and I presumed it had been done, and I am informed that he did give Captain Carter a copy. This was his information when I returned and *still is* his information.

I had six copies made; Mr. Johnson says he gave one

of them to Captain Carter and we have not the sixth one at present.

At any rate, as you state Captain Carter has a copy, had a copy in his possession, whether he got it from us, during all this time--

Mr. Stone: We do not claim there is any harm done on account of your not furnishing us with a copy, but we think you ought to have produced the originals under that notice if you had them.

The witness can go ahead and explain each one of those items you think needs any explanation."

CARTER'S PERSONAL CHECK-STUB BOOKS ON SAVANNAH, GA., BANKS.

Exhibits 39 to 58 (Shields) (June 2, 1888, to April 10, 1897). Vol 31

There was found in Carter's File Case, and transferred to Box B-31, Twenty Check-stub books kept in Carter's own handwriting, of his transactions with the Merchants' National Bank of Savannah. These were before the Board of Inquiry, also before the Court Martial, and also before Commissioner Shields.

We refer to them above by the Exhibit numbers given them in the Shields' Hearing.

Verified by testimony of Major Charles McClure (Shields Vol. 1), p. 541. Vol 23 C 10939

Verified by testimony of Colonel Thos. F. Barr (Shields Vol. 1), p. 547. Vol 23 C 10926

Verified by testimony of E. I. Johnson (Wyman Vol. 1), pp. 19-20. Vol 11 C 5108-9

There was found in Carter's File Case and transferred to Box B-31, all of Carter's original cancelled checks on his personal account with the Merchants' National Bank of Savannah, Ga., covering the period from January 6, 1893, to July 10, 1897. These checks are specifically described and identified by the stub-entries on the stub-books above enumerated, and Exhibits 294 and 539 (Wyman). Vol 11 C 5119

ACCOUNT O. M. CARTER (J. W. O. STERLY, ATTORNEY), IN SOUTHERN BANK, STATE OF GEORGIA.

Exhibit 447 (Wyman) (July to October, 1895). Vol 29

Account of $5,000 deposited in Southern Bank of the State of Georgia, to credit of O. M. Carter subject to check of J. W. O. Sterly, Attorney, disbursed from while Carter was on trip to Europe.

Verified by D. K. Catherwood, bookkeeper of said bank. (Wyman Vol. 1) p. 4 and copied (Wyman Vol. 12) Binder B. Vol 29

MRS. M. W. CARTER'S ACCOUNT, GARFIELD NATIONAL BANK, NEW YORK.

Exhibit 594 (Wyman) (Sept. 23, 1892, to Jan. 17, 1893).

Account Margaret W. Carter, with Garfield National Bank, New York, with accompanying deposit tickets.

Verified by Walter W. P. Hutchinson, adjuster of accounts of said Bank and offered in evidence (Wyman Vol. 1), p. 84, copied pp. 345-347.

CARTER'S ACCOUNTS WITH BROKERS IN NEW YORK.

Exhibit 233 (Shields) (Aug., 1892, to Feb., 1893). Vol 31

Account, O. M. Carter with Watson & Gibson, brokers, New York.

Verified by Geo. R. Gibson, member of firm and offered in evidence (Shields), p. 650.

Exhibit 228 (Shields) (January to April, 1893). Vol 31

Account of O. M. Carter with Charles H. Van deVenter, broker, New York.

Verified by C. H. Van deVenter and offered in evidence (Shields Vol. 1), pp. 643-4.

Exhibit 238 (Shields) (October, 1895). Vol 31

Account O. M. Carter with Reed & Flagg, brokers, New York.

Verified by W. H. Flagg and offered in evidence (Shields Vol. 1), pp. 664-669.

Exhibit 253 (Shields) (Feb. 7, 1895, to May 11, 1896). Vol 31

Entries on the books of the Union Trust Co. of New York, and corresponding deposit tickets, showing all credits to the account kept in the name of R. F. Westcott.

Verified by Tylee W. Hartshorne, supervising bookkeeper of said bank and offered in evidence (Shields Vol. 1), pp. 693-697. Vol 23 S 11091-11095

Exhibit 254 (Shields) (Feb. 7, 1895, to May 11, 1896). Vol 31

List of all checks paid by the Union Trust Company of New York, drawn on account kept in name of R. F. Westcott.

Verified by said Tylee W. Hartshorne and offered in evidence (Shields Vol. 1), pp. 694-697. Vol 23 S 11092-11

Exhibit 67 (Shields). Vol 31

There was found in Carter's File Case and transferred to Box B-31, a certain check-stub book on the Union Trust Company, of New York, which is indorsed:

"Cheque Book, R. F. Westcott, O. M. Carter, Attorney."

The stubs are filled out in Carter's handwriting and run from Feb. 4, 1895, to May 11, 1896.

Verified by testimony of Major Chas. McClure (Shields Vol. 1), p. 541. Vol 23 S 10939

Verified by testimony of Colonel T. F. Barr (Shields Vol. 1), p. 547. Vol 23 S 10942

Verified by testimony of E. I. Johnson (Wyman Vol. 1), pp. 19-20. Vol. 11 S 5108-9

This stub-book is also numbered Court Martial Exhibit 36. It was before the Board.

R. F. Westcott was in Europe from January 29, 1895, to May 11, 1896. Carter's testimony (Wyman Vol. 3), pp. 1429 and 1449. Vol 12 S 7207-8

Exhibit 442 (Parsons) (Feb. 4, 1895, to May 11, 1896). Vol 2

Account of Robert F. Westcott, with Union Trust Company, checks paid signed "R. F. Westcott, O. M. Carter, Attorney."

Verified by T. W. Hartshorne, supervising bookkeeper of said bank and offered in evidence (Parsons Vol 2), pp. 85-86, 179. Vol 10 S 4697 and Vol 28

ROBERT F. WESTCOTT'S ACCOUNTS IN NEW YORK BANKS.

Exhibit 255 (Shields) (1893, 1894, 1895, 1896 and 1897). Vol 3

List of certain checks paid by the Union Trust Company, New York, drawn on account kept in name of R. F. Westcott.

Verified by said Tylee W. Hartshorne, and offered in evidence (Shields Vol. 1), pp. 696-7. Vol 23 Ill 092 3

Exhibit 256 (Shields) (1892, 1893, 1894, 1895, 1896 and 1897). Vol 31

Entries on the books of the Union Trust Company, New York, and corresponding deposit tickets, showing certain credits made to the account kept in the name of R. F. Westcott.

Verified by said Tylee W. Hartshorne and offered in evidence (Shields Vol. 1), p. 697. Vol 23 Ill 092

Exhibit 441 (Parsons) (Aug. 1, 1891, to Feb. 4, 1895, and May 12, 1896, to Oct. 31, 1897). Vol. 28

Account of R. F. Westcott with Union Trust Company of New York.

Verified by Tylee W. Hartshorne, supervising bookkeeper of said bank and offered in evidence (Parsons Vol. 2), pp. 84-85, 176. Vol 10 Ill 463 and Vol 28

Exhibits 443 and 444 (Parsons).

Extracts from the account books of the Union Trust Co. of New York, showing certain credits to account of R. F. Westcott, per deposit tickets.

Verified by Tylee W. Hartshorne, supervising bookkeeper of said bank and offered in evidence (Parsons Vol. 2), pp. 86-87, 181-182. Vol 10 Ill 463 and Vol 28

Exhibit 446 (Wyman) (Dec. 31, 1889, to July 31, 1891). Vol 29

Account of R. F. Westcott, with the Union Trust Company, with accompanying checks and deposit tickets.

Verified by said Tylee W. Hartshorne and offered in evidence (Wyman Vol. 1), p. 3, and (Wyman Vol. 12) Binder B of Exhibits. Vol 1 Ill 509 and Vol 29

R. F. WESTCOTT CHECK STUB-BOOKS.

Exhibits 550 to 564 (Wyman).

15 check stub-books of R. F. Westcott on the Union Trust Co. of New York. These check stub-books were produced by R. F. Westcott at the Shields hearing in New York in 1900 by Mr. R. F. Westcott and placed in the custody of Mr. E. I. Johnson as custodian at that time, and retained by the latter and identified (Wyman Vol. 1), pp. 46-49. Offered without objection (Wyman Vol. 1), p. 50. Vol 11 C5134

Exhibits 565 to 573 (Wyman). Vol 11 C5134-39

9 Photographs of check-stubs from above books. The original stubs having been taken out of said book and sent by Carter to the Attorney-General when the latter was reviewing the Court Martial record. The Attorney-General caused photographs of same to be made and returned the originals to Carter's attorneys.

Vol 11 C5130

See testimony of E. I. Johnson (Wyman Vol. 1), p. 47.

Vol 13 C1374

And testimony of O. M. Carter (Wyman Vol. 3), p. 1376.

Vol 13 C1375

Carter produced one missing stub (Defendant's Exhibit 106) from the above check stub-books before Examiner Wyman in 1905, stating that it was one of the originals taken out (presumably to be sent to the Attorney-General), and returned to Carter through Mr. Rose and Van Brunt, his attorney (Wyman), pp. 1375-6. Vol 13 C1375

R. F. WESTCOTT'S ACCOUNTS WITH NEW YORK BROKERS.

Exhibit 232 (Shields). Vol 31

Extracts from account books of C. H. VanDeventer, broker, New York, showing entries of certain transactions in the name of R. F. Westcott. Verified by C. H. VanDeventer and offered in evidence (Shields Vol. 1), p. 644.

Exhibit 445 (Wyman) (Jan. 1, 1890, to Jan. 1, 1892). Vol 29

Account of R. F. Westcott with C. H. VanDeventer, broker. Verified by C. H. VanDeventer and offered in evidence (Wyman Vol. 1), p. 2, copied (Wyman Vol. 12), Binder B. Vol 11 C5097 Copied Vol 29

Exhibit 435 (Parsons) (Jan. 1, 1892, to Apr. 13, 1894). Vol 2

Account R. F. Westcott with C. H. VanDeventer, broker. Verified by C. H. VanDeventer and offered in evidence (Parsons Vol. 2), pp. 82 and 169. Vol 10 P 4655 and Vol 2

Exhibit 436 (Parsons). Vol 28

Certain credits in account R. F. Wescott with C. H. VanDeventer and offered in evidence (Parsons Vol. 2), pp. 82-170. Vol 10 P 4655-6 and Vol 28

Exhibit 437 (Parsons). Vol 28

Certain credits in account of R. W. Westcott with C. H. VanDeventer, broker.

Verified by C. H. VanDeventer and offered in evidence (Parsons Vol. 2), pp. 83 and 171. Vol 10 P 4656 and Vol 28

Exhibit 239 (Shields). Vol 31

Entries on books of Reed & Flagg, brokers, New York, of certain transactions in name of R. F. Westcott, with certain checks and deposit tickets. Verified by W. H. Flagg, a member of the firm and offered in evidence. (Shields Vol. 1) pp. 665-669. Vol 23 P 11063-67

Exhibit 438 (Parsons) (Jany. 1, 1892, to Nov. 1, 1897). Vol 2

Entries on books of Reed & Flagg, showing all transaction in name of R. F. Westcott, exclusive of those shown in Exhibit 239. Verified by W. H. Flagg, and offered in evidence (Parsons Vol. 2), pp. 83, 172. Vol 10 P 4656 and

Exhibit 439 (Parsons). Vol 28

Extracts from account books of Eames & Moore, brokers, New York, showing transactions of R. F. Westcott.

Verified by Clarence S. Garcia, bookkeeper, and offered in evidence (Parsons Vol. 2), pp. 83, 84, 173. Vol 10 P 4656

Exhibit 440 (Parsons). Vol 28

Extracts from the account books of Drake, Mastin & Co., New York, showing transactions of R. F. Westcott.

Verified by Charles Catheart, bookkeeper, and offered in evidence (Parsons Vol. 2), pp. 84 and 175. Vol 10 P 4656

KENDALL & WHITLOCK ACCOUNT.

Exhibit 344 (Shields). Vol 24 P 12405

Account of L. Laflin Kellogg, with Kendall & Whitlock, brokers, New York, showing sale of 200 shares of stock of Delaware & Hudson Canal Co., with accompanying check, Exhibit 345. Vol 24 P 12407

Verified by Geo. C. S. McNary, bookkeeper of Kendall & Whitlock, and offered in evidence (Shields Vol. 2), pp. 1643-1646. Vol 24 P 12045-8

Exhibits 342 and 343 (Shields). Vol 24 P 12039-41

2 stock certificates of Delaware & Hudson Canal Co., issued to O. M. Carter, Oct. 9, 1895. Transfer signed O. M. Carter, Nov. 22, 1897. Verified by David Nevins and offered in evidence (Shields Vol. 2), pp. 1636-1646. Vol. 24 P 12028-48

A. W. KILBOURNE & COMPANY ACCOUNT.

Exhibit 417 (Parsons). Vol 28

Account of L. Laflin Kellogg with A. W. Kilbourne & Co., showing the sale of certain securities.

Verified by Wm. G. Sage, bookkeeper of said firm and offered in evidence (Parsons Vol. 2), pp. 68-69, 114. Vol. 10 P 6448-49 and Vol. 28

OTHER ACCOUNTS.

A number of other accounts in evidence will be referred to hereinafter.

JOHNSON ANALYSIS OF THE ACCOUNTS. EXHIBIT 319.

Mr. Edward I. Johnson, National Bank Examiner, and expert accountant, has on Exhibit 319 (Wyman), an analysis of the various accounts in evidence, in relation to Carter's Disbursing Checks issued to the contractors, which he has prepared on eighteen large sheets, throwing in juxtaposition contemporaneous or related items, covering the period from 1891 to 1897, which is in evidence as Exhibit 319, and is explained by Mr. Johnson in his testimony (Wyman Vol. 1), pp. 87 to 119. *

The Government contends that this analysis demonstrates conclusively:

(1) That in 1891 and 1892, certain specific amounts were paid by B. D. Greene and John F. Gaynor to Captain Carter out of the profits of their contracts in the Savannah District, but the ratio in which their profits were divided is not shown.

That through these receipts from the contractors, Carter passed from the condition of practical poverty and a borrower of money in small amounts which he occupied prior to 1891, into the position of a growing capitalist after 1891, and finally to be almost a millionaire in 1897.

(2) That commencing with the profits of Contracts No. 4820 of Sept. 16, 1892, and No. 4960 of Oct. 22, 1892, for Savannah Harbor, in which Carter combined the three designs of mattress to be bid on at one price, and under which he introduced the multiple mats, from thence forward to the end of Carter's service in Savannah, in July, 1897, Carter received back from the contractors regularly, month by month, as the contract money was disbursed to them, one-third of the net profits of the contracts, after allowance for the expenses of the work and for exorbitant payments to E. H. Gaynor and W. T. Gaynor for superintendence of the work.

P. 551. Note

*There were no books of account kept by the Atlantic Contracting Co. or by Greene & Gaynor of the earnings and the disposition of the profits of the contracts. (*Ante*, p. 512a.)

There were no books of account kept by Carter of his transactions with Westcott, and none kept by Westcott of his transactions with Carter other than the check stub books of each of them showing cash transactions. (Vol. 14, p. 6426-7-8.)

(3) That the aggregate of Carter's third of the profits shown to have been received by him from Jan. 3, 1893, when they commenced to divide by thirds, up to July 6, 1897, inclusive, amounted to $722,528.02.

(4) That the majority of these payments in nearly every instance were made by *currency* deposits either in Carter's personal account or in the account of Carter's ex-father-in-law, Robert F. Westcott, while the latter was in Europe, and Carter controlled the account by powers of Attorney. That in some instances while R. F. Westcott, who had retired from business on account of his advanced years, was in New York, Carter had Greene & Gaynor pay over to R. F. Westcott for Carter, his share of the division money, and in some instances Carter himself placed money in the hands of Westcott for investment, but that in every such case, R. F. Westcott would invest the money and immediately turn over the investment to Carter.

(5) That from 1891 to April, 1893, Carter placed the currency deposits received from Greene and Gaynor, to his own credit with banks and brokers.

(6) That as the amount of his fraudulent profits commenced to pile up, he feared that the fact of his rapid rise to fortune might lead to the discovery of the fraud, and from April, 1893, he commenced to cover up his money by deposits in his father-in-law's name and making investments in that way, or by inducing his ex-father-in-law to make investments for him, under the guise of Carter being interested with Greene & Gaynor in railroad and other outside contracts.

(7) That the accounts show that R. F. Westcott never retained a dollar of the moneys coming from Greene & Gaynor.

(8) That the possession of the securities and other property bought with the third of the contract money and the use of the income, is shown in Carter from the dates of the pur-

chase of the securities or property up to the time they have been sequestered by these proceedings, except where disposed of otherwise by Carter.

Admissibility in Evidence.

Such a bringing together of the voluminous facts and figures in the accounts and exhibits made by an expert accountant is exceedingly valuable as an aid to the court, and is admissible in evidence.

* *Burton* v. *Driggs*, 20 Wall, 136.

Indeed, Exhibit 319 is proved by the documentary exhibits referred to independent of Mr. Johnson's testimony.

P. 553. Note

*"Experts are entitled to give in evidence their opinions as to the conclusions within the range of their specialties."

Congress, etc., Co. v. *Edgar*, 99 U. S., 645.

Experts testimony as to accounts:

U. S. v. *Allen*, 47 F. R., 700.

State v. *Clements*, 3 Bky. cases, 85 N. W. Rep., 229.

2 Wigmore Evi., 1230.

It is not contended that there was a division by thirds during this period.

Among others, the following disbursing checks were issued by Captain Carter:

Disbursing Checks on Assistant Treasurer, N. Y.

No. 167,671 dated Sept. 11, 1891, favor J. F. Gaynor,	$27,335.65
No. 167,695 dated Oct. 9, 1891, favor J. F. Gaynor,	23,424.32
No. 167,746 dated Nov. 9, 1891, favor J. F. Gaynor,	7,925.88
No. 199,962 dated Nov. 24, 1891, favor J. F. Gaynor,	7,837.19
No. 199,966 dated Dec. 1, 1891. favor J. F. Gaynor,	13,561.13

Each of the above checks bear the indorsement of John F. Gaynor and B. D. Greene, See Exhibit 285 Shields. Vol 31

The following appears from the accounts in evidence:

Dec. 18, 1891. Withdrawn by B. D. Greene from American Exchange National Bank, as shown by Exhibit 330-J Vol 29	$ 1,500.00
* Dec. 18, 1891. Deposited by O. M. Carter to his own account in Union Trust Co., as shown by Exhibit 251 (ticket Vol 31 handwriting of Carter) currency....	1,400.00
June 8, 1892. Withdrawn by B. D. Greene, from American Exchange National Bank, as shown by Exhibit 330-P. . Vol 29	$ 2,500.00
June 8, 1892. Deposited to credit of O. M. Carter in Union Trust Co. as shown by Exhibit 251 (ticket in handwriting of Westcott) currency... Vol 31	2,500.00
July 22, 1892. Withdrawn by J. F. Gaynor, from American Exchange National Bank as shown by Exhibit 593 Vol 29	$10,000.00

P. 554. Note

*Carter appears to have taken the $100 to Savannah. At any rate he deposited, Dec. 21, 1891, cash $90, to his credit in Mer. Nat. Bk., Savannah on the morning of his arrival there. (P. Exh. 48 Vol. 31; and see Vol. 19, p. 9035.)

Carter appears to have made this $100 good by adding $100 to the deposit July 22, 1892. (*Post*, p. 555.)

July 22, 1892. Deposited to credit of O. M. Carter in Union Trust Co., as shown by Exhibit 251 (ticket in Carter's handwriting) currency. Vol 31 $8,100.00

July 22, 1892. Deposited to credit of R. F. Westcott in Union Trust Co. (ticket in handwriting of Carter) as shown by Exhibit 256, currency. Vol 31 2,000.00—$10,100.00

The 2,000 was returned to Carter Aug 26 92 by deposit in Union Trust Co Post 5558

Oct. 29, 1892. Withdrawn by J. F. Gaynor from American Exchange National Bank as shown by Exhibit 593 Vol 29 2,500.00

Oct. 29, 1892. Deposited by O. M. Carter (See Exhibit 606 Wyman) to credit of M. W. Carter in Garfield National Bank, New York, as shown by Exhibi 594, and deposited ticket, currency. Vol 11 P 2333.35 2,450.00

($2,000. of above transferred by check of M. W. Carter, deposited Nov. 7, 1892, to credit O. M. Carter in Union Trust Co. as shown by Exhibits 61 and 597). Vol 29 P 8858 was transferred to Carter credit in Union Trust Co Jan 16-1893 Post 9604

Vol 13 P 5949-50

The above items of currency deposits to Carter's credit at corresponding dates to withdrawals of similar amounts by Greene and Gaynor, do not embrace the $2,500 deposited to Carter's credit in the Union Trust Co. on December 13, 1892, just after the death of Carter's wife, which was a gift from Westcott to Carter for payment of house furnishing promised prior to Mrs. Carter's death (*ante*, p. 515).

It is claimed by the defense that these co-incidences were merely fortuitous.

But it would have been easy for Greene and Gaynor in the New York hearing to have shown what had become of these several considerable amounts withdrawn by them, yet they never did it, and Carter has not attempted it.

Besides these are the first of a series of coincident deposits of "currency" which went to Carter's benefit, at the time of similar withdrawls by Greene and Gaynor running month by

P. 555. Note

*Carter had access in 1898 to this deposit ticket at the time he made up his annotated acct. for the Atty. Genl. (Vol. 14, p. 6363–71–79.) The deposit ticket has now marked on it, "Bills R. F. W.," in Carter's handwriting in pencil, Carter annotated this item as a deposit from "R. F. W.," "and in his presence." He now admits that Westcott was not in New York, but was at Richfield Springs at the time Carter made the deposit. (Vol. 14, p. 6363.)

month for several years and aggregating $578,299.86 as we shall presently see.

If one, two or three of these coincidences could be explained, the unexplained one would by their overwhelming number establish the fact of where these "currency" deposits came from.

INVESTMENTS.

Vol 30

On Exhibit 319, Division 1, Mr. Johnson has referred by Exhibit number and description, to a number of investments made by Capt. Carter in his own name, during the period of receiving these coincident deposits, among others, a few shares of Savannah Towboat stock and Cotton Mill stock, and the following bonds bought (Exhibit 233 Shields). Vol 31

Through Watson & Gibson brokers, in Carter's name:

Aug. 4, 1892, 5M General Electric bonds for..... $5,100.00
Aug. 4, 1892, 5M Ches. & Ohio 4-1/2's for..... 4,206.25

Paid for by Captain Carter's check on the Union Trust Co.

The serial numbers of each of the above bonds are given on the brokers accounts so that they are fully identified.

SALES OF CERTAIN SECURITIES.

Vol 30

On Exhibit 319, Division 1, under the head of Securities Sold, Mr. Johnson has entered from the accounts of brokers referred to by exhibit number, the following sales made of the securities previously bought by Carter as above, to wit:

Jan. 3, 1893, sold for account of O. M. Carter by C. H. Van Deventer (Exhibit 228), 5,000 Ches. & Ohio 4-1/2 bonds. Vol 31 ..... $3,981.25
(Same serial numbers as purchased by Carter Aug. 4, 1893.)

April 18, 1893, sold for account of R. F. Westcott by C. H. Van Deventer (Exhibit 232), 2,000 General Electric Bonds Vol 31 ..... 1,977.50

April 19, 1893, sold for account of R. F. Westcott by C. H. Van Deventer (Exhibit 232), 3,000 General Electric bonds Vol 31 ..... 2,951.25
(Same serial numbers as purchased by Carter Aug. 4, 1893.)

*Statement of Carter's receipts of the trust fund and investments therefrom, during period covered by Division 1:

Carter's receipts (*ante*, pp. 554–5):

Dec. 18, 1891	Currency Deposit U. T. Co.	$1,400.00
June 8, 1892	Currency Deposit U. T. Co.	$2,500.00
July 22, 1892	Currency Deposit U. T. Co.	8,100.00
July 22, 1892.	Currency Deposit U. T. Co.	2,000.00
Oct. 29, 1892,	Currency Transferred Nov. 7, 1892, and Jan. 16, 1893, to U. T. Co.	2,385.81
		$16,385.81

Investments from above fund—tow boat stock:

Paid for by Carter's checks on Union Trust Co. per Plf. Exhibits 59, 60, 61. (Vol. 31 and 449, Vol. 29.)

Dec. 23, 1891, check for $500 Jan. 18, 1892, check for 425	Cert. 133	10 shares	$ 925.
May 13, 1892, check for $1,000 part of certf. 145		10.53 shares	1,000.
Aug. 27, 1892, check for $1,050 Certf. 152		10 shares	1,050
Dec. 19, 1892, stock dividend 37½% declared on above 30.53 shares (Ex. 449, Vol. 29 and Vol. 4, p. 2044), part Certf. 170		11.44 shares	
Dec. 19, 1892, check for $625, part Certf. 170		6.25 shares	625.
		48.22 shares	$3,600.

(Certificate No. 145 is for 15 shares and embraced 4.47 shares paid for by Carter's check May 16, '92, $425, on the Mer. Nat. Bk., Savannah, which the Government does not claim as traced to the trust fund, and it embraces 10.53 shares paid for by check on the U. T. Co., which the Government does claim as above.

Certificate 170 for 25 shares embraces 7.3 shares declared dividend on 19.5 shares previously owned by Carter which the Government does not claim as traced to the trust fund and it embraces 17.7 shares which the Government does claim as above.)

Bonds

Paid for by Carter's checks on U. T. Co., per Exhibit 233 Vol. 31 (Exhs. 60 and 61 Vol. 31):

Aug. 4, '92 5M. Genl. Electric bonds	$5,100.	
5M. Ches. & Ohio 4½% bonds	4,206.25	
	9,306.25	
Less coupons credited	112.50	9,193.75

Savannah Cotton Mill Stock

Paid for by Carter's check on U. T. Co., (Ex. 62):

Nov. 3, 1892, 5 shares Certf. 123	$532.50
Total investments claimed by Government	$13,326.25
Excess of trust fund receipts in U. T. Co. over disbursements, Division 1	$3,059.56

Note.—It was contended by the defense that inasmuch as Carter issued his checks to the amount of $1,925 on the Union Trust Co. in payment of the 20.53 shares of the tow boat stock claimed by the Government purchased up to May 13, 1892, and whereas the Government charges Carter with having received but $1,400 of the trust fund deposited in the Union Trust Co. up to that time, that therefore at least $525 of the purchase money of those 20.53 shares or 5.6 shares out of the 20.53 shares, belong to Carter.

But while it is true Carter advanced out of his individual funds in the Union Trust Co. this $525 on May 13, 1892, as a matter of fact he testified that this was made good to his own fund from the deposit in the Union Trust Co. of $2,000 on Aug. 26, 1892, to his own credit and that it was the $1,400 and this $2,000 which really paid for all this tow boat stock. (Testimony of Carter Vol. 14, p. 6325.)

Both the $1,400 and the $2,000 we insist (*ante*, p. 554–5) was from the Greene & Gaynor fund. And the swapping of the funds in the purchase would not alter our right to treat the investment as an investment of the trust fund.

Van Allen v. *The Amer. N. Bk.* 52 N. Y., p. 1–5; approved in *Nat. Bk.* v. *Ins. Co.*, 104 U. S., 70.

There was a deposit on Dec. 13, 1892, of $2,500 in a check made by Van Deventer in Carter's account in the Union Trust Co.

Westcott testified that he had promised his daughter to furnish her house, and when she died, that there was a balance due, and that he gave Carter this balance, a little over $2,000, he thinks. (Vol. 14, p. 11724.)

Carter testified that the amount given him at that time was this $2,500, Dec. 13, 1892. (Vol. 12, p. 5466.)

Counsel for defense says, since the complainant admits that this item of $2,500 did not come from Greene & Gaynor funds, the presumption is that the check for $625 on the Union Trust Co. of Dec. 19, 1892, which helped to pay for tow boat stock, came out of that private money. But as we have already seen there was a large amount of the trust money in the same account in the Union Trust Co. at that time. There is a conclusive presumption of law that the amount drawn out, invested and saved was the trust money, and the part spent and dissipated by Carter was his own.

Nat. Bak. v. *Ins. Co.*, 104 U. S., 68

The proceeds of the sales made January 3, 1893, and April 18th and 19th, 1893, were re-invested in other securities, which other securities went to Carter. (See Division 2, *post*, p. 567.)

CARTER'S DEFENSE.

Captain Carter claims that all of these currency deposits in 1891 and 1892 were gifts from his father-in-law.

But we have all of Mr. Westcott's bankers and brokers accounts in evidence and it no where appears from what source R. F. Westcott received these large sums of *currency* to give to Carter. He might be supposed to have currency in considerable quantities once or twice, but why always currency, without any known account of its source or reason for having it in that form.

Carter testified (Wyman Vol. 2), p. 29 and 52: That on October 24, 1891, when he and his wife were visiting Westcott at Orange, N. J., that Westcott gave Mrs. Carter $50,000, of which Carter took $5,000 to Savannah and *Westcott kept* $45,000 for Mrs. Carter.

Carter testified (Wyman Vol. 2), p. 117: That at Richfield Springs, N. Y., on July 21, 1892, Westcott gave Carter $10,000 of which $8,000 was to invest in bonds for Mrs. Carter and $2,000 to be deposited by Carter to Westcott's credit with Union Trust Company, promising to return the $2,000 to Carter at a later day.

Carter testified (Wyman Vol. 2) p. 6-7: That the above $10,000 was a part of the $45,000 which Westcott had been keeping for Mrs. Carter.

Carter had testified (Wyman Vol. 2) p. 52: That at the time, October 24, 1891, that Westcott said at Orange, N. J., that he would keep the $45,000 for Mrs. Carter.

> "Mr. Westcott said that he would put it in my wife's trunk which was in a silver vault."

Now what was Westcott doing having $10,000 of this currency, July 21, 1892, nine months later, up at Richfield Springs, N. Y.?

Westcott's Account Was Overdrawn.

On July 22, 1892, Westcott's account with C. H. Van Deventer was overdrawn $13,061.91 (See Exhibit 435 Parsons).

It also appears from Exhibit 441 (Parsons) that if Carter had not deposited the $2,000 to Westcott's credit, the latter account in the Union Trust Co. would have been overdrawn on July 22, 1892, $520.75 (Wyman Vol. 3), p. 1606.

There is documentary evidence indicating very strongly that the $2,000 which Carter deposited to Westcott's credit on July 22, 1892, was borrowed by Westcott from Carter and that Westcott gave Carter a demand note for it.

There is a letter which comes from Box B-31, marked Defendant Exhibit 9 (Wyman) from Westcott to Carter, dated August 26, 1892. In this letter, Mr. Westcott says:

> "I deposited $4,000 to your credit this A. M. Please have the lots transferred to me and send me the demand note for the $2,000 and for the Greene note and also the Conquest note."

Carter, when his attention was called to the above, and asked if the $2,000 which he had deposited to Westcott's credit on July 22, 1892, was not covered by a demand note from Westcott to Carter, said:

> "I really do not recall whether that refers to that or whether it relates to some other matter."

Carter's Diary Entries.

We will deal later with Carter's effort to bolster up his account by the production from his own possession in 1905, of Diaries written up by himself, which he claims were written up at the time of the transactions, but which show on their

P. 558. Note

*$2,000 of this $4,000 was a return by Westcott to Carter of the same amount deposited by Carter in Westcott's account July 22, 1892 (Vol. 14, p. 6325), and the other $2,000 was disbursed by Carter on account of Conquest for Westcott. (See Pef. Exh. 590, Vol. 29, and Def. Exh. 96B, Vol. 10, p. 9551.)

face, that all the crucial entries relied on by him are written over erasures.

Aside from this these alleged Diaries are not admissible in evidence.

Small memorandum book carried in pocket cannot be admitted in evidence.

Taylor on Evidence, Vol. 2, p. 463 (12).

Bates vs Drube - 151. U.S. P. 149

Carter's Diary entry for October 29, 1892, is "M dp 2000 from box & 450 from Daddy Gar Bk" Carter had taken a box in joint names of M. W. Carter and O. M. Carter on August 8, 1892, in Garfield National Bank. See Exhibit 424 (Parsons). Carter testified this meant that Mrs. Carter had taken $2,000 from her box and $450 which Westcott gave her making $2,450 which was deposited October 29, 1892, in Garfield National Bank, New York. But Complainants' Exhibit 424 shows that there was no visit at all to the box from October 10th, until December, 1892. Carter had evidently overlooked this fact when he made up that diary entry.

The $50,000 *Alleged Gift.*

We will deal later with Carter's reason for starting out in his explanation of an alleged gift in October, 1891, in currency from Mr. Westcott of $5,000 with $45,000 in reserve.

Carter made no such explanation before the Board or before the Court Martial, and made it only after the Government had closed its testimony, and he had incubated over Mr. Johnson's analysis of his accounts for a year, and he was forced to account for the source of deposits of currency in his personal accounts from 1891 to April 1893 of over $50,000 as we shall presently see.

DIVISION NO. 2 (JANUARY 3, 1893), EXHIBIT 319.

THE FIRST DIVISION BY THIRDS.

Commencing with Division 2, Mr. Johnson has in Exhibit 319 (which is intended to show the division of the profits by thirds from 1892), has dealt with all the disbursing checks issued on the jetty contracts in the Savannah District which were deposited or collected in New York.

He has not brought into Exhibit 319 the checks deposited in the local banks, and used to carry on the work, nor has he dealt with the disbursing checks which were withheld from deposit at the time of the Divisions by thirds, or otherwise appear to have gone to the younger Gaynors, as set forth in Exhibit 329 (Wwman Vol. 1), p. 326.

(Testimony of Johnson, Wyman Vol. 1, page 87).

Division By Thirds.

The first disbursing checks issued by Captain Carter for work under Contracts No. 4820 of September 16, 1892, and No. 4960 of October 22, 1892, the big contract for Savannah Harbor which were deposited in the New York banks, were deposited on January 3, 1893, to the credit of John F. Gaynor in the American Exchange National Bank, New York. Contract 4960 was the first contract let to the Atlantic Contracting Co., which had been chartered July 22, 1892 (*ante*, p. 118).

Minutes of Atlantic Contracting Co.

The Minutes of the Atlantic Contracting Co., showing the proceedings on its organization, August 5, 1892, are in evidence as Complainant's Exhibit 265 (Shields) copied in record (Shields Vol. 1), p. 829-832. From these minutes it ap-

pears that the plant of Greene & Gaynor was transferred to the Atlantic Contracting Co. at a valuation of $26,932.50 (Shields Vol. 1), p. 831.

The Deposit of Disbursing Checks.

Exhibit 243. John F. Gaynor's credits for deposits in American Exchange National Bank, show the deposit of the following of Carter's disbursing checks on Assistant Treasurer, New York and Merchants National Bank of Savannah, in his account, to wit:

Deposit Jan. 3, 1893.	Check No. 200301	$21,102.67
"	" 200309	21,492.78
"	" 52955	3,037.17
"	" 200308	20,000.00
Total Deposit to credit of J. F. Gaynor		$65,632.62
Deducting value of plant put in by Greene & Gaynor as above		26,932.50
Amount of profits for division		$38,700.12
One-third of which is		12,900.04

Carter's Deposits to His Own Credit.

Jan. 3, 1893, with Union Trust Co. Exch. 251, bills, $3,550.
Jan. 3, 1893, with Van Deventer Exch. 228, currency 9,350.

$12,900.

Withdrawals by J. F. Gaynor.

Under head of certain checks between the parties, Mr. Johnson has entered from Exhibits 245 and 241-242 Gaynor's account and Greene's account in the American Exchange National Bank, numerous checks isssued by Gaynor on January 3, 1893, some of which were deposited in Greene's account and some not, there were several checks which the bank accounts fail to show in whose favor they were drawn. As

P. 561. Note

*The last three of these checks were issued by Carter in New York Dec. 31, 1892, and delivered by him in person to the contractors. (Vol. 13, pp. 5960-1.)

Greene and Gaynor failed to produce these original checks Mr. Johnson has entered these checks on Exhibit 319 as being in "favor of unknown" meaning by that simply that the accounts do not show in whose favor the checks were issued.

These checks in favor of "unknown" were as follows:

J. F. Gaynor, issued and paid Jan. 3, 1893, favor of unknown ..... $ 4,000.00

J. F. Gaynor, issued and paid Jan. 3, 1893, favor of unknown 11,641.28

J. F. Gaynor, issued and paid Jan. 3, 1893, favor of unknown 150.00

ALSO

J. F. Gaynor, issued and paid Jan. 3, 1893, in favor of B. D. Greene 1,219.67

Carter's third, $12,900, might have come from the proceeds of the above checks of Gaynor cashed on that day. In this particular case there is no specific check for the exact third as there were in subsequent divisions.

Carter Issued the Disbursing Checks in New York.

Three of the disbursing checks deposited by J. F. Gaynor, on January 3, 1893, bear date December 31, 1892.

Carter admits on cross-examination, he was in New York from December 29, 1892, to January 3, 1892, inclusive (Wyman Vol. 3), p 1038, and that he must have issued and delivered these checks to the contractors there (Wyman Vol. 3), p. 1046-7.

Carter Makes False Report to Chief of Engineers As To His Whereabouts.

As an Army officer, Captain Carter was compelled by the regulations to make a personal report at the end of each month of every absence from his station, giving the day of his departure, and the day of his return to his station, and giving a reference to the letter of his superior officer authoriz-

P. 563. Note

*Carter testified before the Board in explanation of one of these false personal reports for 1894 (Vol. 2, p. 649):

"Sometimes I would leave to attend for some business for Mr. Westcott, and I would be away four or five days, and I remember speaking to the Chief of Engineers about it and I said, 'Can't I go without reporting it,' and he said, 'I can't give you authority,' and I said, 'I am going to do it until somebody objects,' *and he said nothing*, and I have been away from time to time without authority from my station." (Vol. 2, p. 649.)

Later Carter was confronted with Genl. Craighill (who was Division Engineer in 1894 and Chief of Engineers in 1895), and Carter then explained that it was Genl. Casey (at that time dead) with whom the conversation occurred. (Vol. 2, p. 905.) When trying to explain similar false reports in his testimony in the present civil suit he improves upon the alleged conversation with the dead Chief of Engineers and now says not as testified before that the General "said nothing," but that the General said, "I shall not object if others do not." (Vol. 13, p. 6169.)

Carter put in a personal letter dated Sep. 5, '96, from Capt. Goethals then on duty in Washington to him, indicating that another officer (Heap) had been called down by the department for leaving his post on a little trip and not putting it in his personal report. (Vol. 13, p. 5994.) But another's wrong can't excuse Carter. Besides Carter had a motive for his false reports which are not shown as to others.

ing such absence. He had to report absence from his station, which he admits was Savannah, even where he went to other places in his district on duty. A copy of one of Captain Carter's personal reports is copied in the record (Wyman Vol. 3), p. 1068. A copy of the regulations is printed on the report and is also copied in the record at the same place, to which reference is made.

As all of Captain Carter's personal reports were on file, we simply cross-examined Captain Carter as to them, without copying all of them into the record, but they are all signed by Captain Carter personally and are subject to the inspection of the Court.

Carter Admits He Failed to Report Absence.

Carter admits he failed to state in his personal report his absence from his station from December 23 to December 31, 1892. (Wyman Vol. 3) p. 1039. Carter admits he failed to state in his personal report his absence from his station from January 1 to 5, 1893. (Wyman Vol. 3) p. 1040.

Carter Alleged Reason.

Carter testified (Wyman Vol. 3), p. 1039:

> "A. Yes; the reason is this: I told General Casey, the Chief of Engineers, sometime before that my father-in-law lived in the North, and that I should like to visit him quite often, and that as I should conduct my work just the same as if I were in Savannah, I should not make any official report of my absence from the City of Savannah, so long as I conducted my work, and it was with that understanding that I omitted a great many of my absences from Savannah when I was attending to all of my duties during those absences. Following that, I laid no charge to myself upon the leave of absence, so long as I attended to all my duties."

Explaining a similar failure to report his absence from his

station, October 29, 1892, where it appeared that he deposited $2,450 in currency in the Garfield National Bank of New York, on the same day that J. F. Gaynor drew out $2,500 from the American Exchange National Bank (*ante*, p. 554), Carter testified (Wyman Vol. 3), p. 1920:

> "I had permission from the Chief of Engineers to report myself as on duty at my station in a number of instances when I was not actually in Savannah. That was in order that my leave should not count more than a certain number of days. For instance, I have reported myself on duty at my station when I was in Washington with the Chief of Engineers.
>
> Q. Will your reports, Captain, as I read them, show when you were absent, do they not, that you were absent upon leave. Have you got any written authority to make a wrong statement on your report?
>
> A. No; this is not a wrong statment, Mr. Erwin, it is customary, or was customary, I believe it has been changed since then, for officers to be absent from their station in person while carrying on all of their duties, and in that case report themselves as present for duty, while they were not actually at the point where they were stationed.
>
> For instance, I have had authority to report myself as on duty at my station when I would be in New York. For instance,—
>
> Q. You have not got any written authority?
>
> A. No; I have not any such written authority, no."

This alleged "custom" is in direct violation of Article IX of the Army Regulations.

See Army Regulations of 1889, page 5.

General Casey, is dead; can it be credited that he would have orally given Carter authority to make false reports of his presence at his station when he was not, for the purpose as Carter states it, to make frequent visits to Carter's father-in-law in New York?

General Wm. P. Craighill, who was Chief of Engineers from May 10, 1895, to September 1, 1897, when he was retired (*ante*, p. 498) was called as a witness for Carter be-

fore the Board of Inquiry in references to similar false monthly reports made by Carter during the time General Craighill was Chief of Engineers, and stated (Board Record Vol. 3), p. 826:

"Q. Again, in the statement of Captain Carter, he says:

'During short intervals I have been absent from my post without leave, but never secretly and neve so far as I remember, without making it known either to the Chief of Engineers personally or to some one in his office at Washington.'

Do you recollect any such conversation?

A. I do not. But I do recollect a conversation I had with Captain Carter before I became Chief of Engineers, perhaps more than one, in which he told me of an understanding that existed between himself and General Casey, while he was Chief of Engineers, in reference to the Captain's absence from his station. I recollect those conversations, and I don't know as I made any comment upon them because I knew that every officer, like myself, made his personal reports to the Chief of Engineers, in which part of it is to state the time, the dates of his absence from his station. I think those are the words, 'absence from station,' and I know that I myself was always exceedingly careful in doing that and I took it for granted that everybody else was as careful as I was; and as to Captain Carter's absence from his station, I knew nothing about it.

Colonel Gillespie (reading from Captain Carter's statement):

"It has been alleged and charged that I have sometimes absented myself from my station without leave. I frankly admit that this charge is technically true. During short intervals I have been absent from my post without leave, but never secretly, and never, so far as I remember, without making it known either to the Chief of Engineers personally or to some one in his office at Washington, and I desire to state further to the Board that my absences were never clandestine, were never intended to deceive and never interfered with the proper conduct of my duties.

Are you aware of his ever having made to you personally any report of absence without leave?

A. I don't recollect any such report."

Carter's Reason for Failing to Report Absences.

We are not here endeavoring to convict Captain Carter for violation of the Army Regulations, or with intent to deceive the Chief of Engineers so as to keep his absence on private business from being charged up against him and cutting him out of his summer vacation.

The point is this, that commencing from 1892 for five years, Carter made it a practice of being in New York on the dates when his disbursing checks to Greene & Gaynor were deposited and the contractors profits were being divided out, and in almost every instance he reported himself in Savannah on those occasions while he was actually in New York. And also he made similar false reports on numerous other occasions when the handling of his big investments which began to accumulate took him there.

As General Craighill stated to the Board the Chief of Engineers never makes it a business personally to look through these personal reports of the local engineers. But suppose Carter had entered upon his monthly personal reports all his visits to New York from 1891 to 1897, as is now admitted by Carter? Can it be doubted that it would have lead to an investigation and probably to a disclosure of his motives?

We can but conclude that the false reports were made by Carter for the purpose of not attracting attention to his habitual absences in New York.

CARTER'S INVESTMENTS. DIVISION 2. Vol 30

Mr. Edward I. Johnson, has entered on Exhibit 319, Division 2, under the head of "How Invested," certain purchases of securities at corresponding dates to the Division.

Purchases through C. H. Van Deventer, broker, in Carter's name (Exhibit 228): Vol 31

Jan. 3, 1893, 5,000 Erie 2nd Consol 5% bonds....	$ 5,087.50
Jan. 4, 1893, 5,000 Reading 4% bonds.....	4,218.75
Jan. 4, 1893, 5,000 Wabash 1st 5% bonds.....	5,131.25
	$14,437.50

Paid for as follows:

Jan. 3, 1893, proceeds sale securities sold for Carter, see Division 1 (*ante*, p. 556).....	$ 3,981.25
Jan. 3, 1893, currency deposit by Carter, Exhibit 228 Vol. 31.....	9,350.00
Jan. 3, 1893, check O. M. Carter on Union Trust Co. Exch. 252 Vol. 31.....	1,106.25
	$14,437.50

Van Deventer's account, Exhibit 228, shows that the above bonds purchased, were delivered to Carter Jan. 4 and February 10, 1893.

Carter had a safety box in the Garfield National Bank in the joint names of himself and wife, but his wife had died December 7, 1892. On the day Carter received the bonds purchased through Van Deventer, January 4, 1893, he visited that safety deposit box. See Exhibit 424 (Parsons): Vol 2

SALES OF CARTER'S SECURITIES.

Of the above securities bought by Carter, the following were subsequently sold:

Apr. 19, 1893, 5 M Erie 2nds, sold by R. F. Westcott through Van Deventer.....	$4,818.75
Apr. 18, 1893, 5 M Reading 4's sold by R. F. Westcott through Van Deventer.....	3,712.50
(Proceeds were re-invested in other securities which were turned over to Carter (see Division 5 "B") Vol. 30	
May 19, 1897, 5 Wabash 1st 5's, sold by R. F. Westcott through Reed & Flagg.....	5,093.75
(Proceeds were applied to Carter's investment in Orange, N. J., property, see Division 31, "C"). Vol 30	

See Post. P. 787.

P. 567. Note

*Account of Carter with the trust fund deposited in Union Trust Co.:

Balance of trust fund deposited to Carter's credit in Union Trust Co. not invested from Division 1, *ante*, p. 556(a)	$3,059.56
Jan. 3, 1893. Currency deposit Union Trust Co., *ante*, p. 561	3,550.00
	$6,609.56
Jany. 3, 1893. Withdrawn by check for investment, see above	1,106.25
Balance in Union Trust Co. not invested to end of Division 2	$5,503.31

COLLECTION OF COUPONS.

The coupons on the 5 Wabash 1st 5s were deposited in Carter's individual account in the Union Trust Company May 2, 1893, May 13. 1896, and November 21, 1896. In 1895, they were deposited in the R. F. Westcott, O. M. Carter, attorney, account, Westcott being in Europe, but Carter drew out the proceeds and spent it on himself as we shall see later.

CARTER'S CONTENTIONS.

Carter testified on his direct examination that the $12,900 currency which he deposited to his own credit on January 3, 1893, was part of a gift of $13,300 from his ex-father-in-law delivered to him by R. F. Westcott on that day, of which he, Carter, deposited $12.900 in New York and took $400 to Savannah. That it constituted part of the oriignal $45,000 which Westcott had set aside for Carter's wife October 24, 1891. He claims that $36,600 of this was found on December 29, 1892, in the safety deposit box in the Garfield National Bank, which box was in the joint name of Carter and his wife, and that R. F. Westcott had taken possession of it, saying he would give it back to Carter some day. (Wyman Vol. 2) pp. 124-125. Cross-examination (Wyman Vol. 3), p. 1044.

THE DIARIES.

He produced nothing to substantiate his claim except (1) certain entries in a pocket diary which he produced in 1905 before Examiner Wyman in his own handwriting; and (2) lead pencil memoranda also in his own handwriting on the backs of letters of antecedent dates relating to other subjects, upon which letters he claims he made the memoranda at the time of the transactions, the letters being produced from his own custody, and the memorandums being exhibited for the first time before Commissioner Wyman in 1905.

It is true, he claims that these original letters and diaries

were delivered to him by General Barr during the Court Martial in the box of papers returned to him at that time (*ante*, p. 31), but General Barr testified he examined all the papers returned and the diaries for just such evidence, before they were returned to Carter, and saw no such entries on any of them then. Testimony of General Barr (Wyman Vol. 9), p. 4578, 4586.

To like effect testimony of Colonel McClure (Wyman Vol. 9), p. 4619.

The diary entries can add nothing to the force of Carter's testimony, for the truth of their having been made at the time he claims they were made, rests solely upon his own testimony.

As a matter of law, the entries on these pocket diaries and memoranda, on letters carried around in his pocket, cannot be admitted to corroborate his own testimony. (*Ante*, p. 559.)

Bates vs Preble 151. U.S P. 149

The Diary Entries Different Now from What They Were Before the Board.

The statement account of O. M. Carter with the Union Trust Company, Exhibit 367 (Court Martial) which was in Carter's File Case (*ante*, p. 532), showed a deposit on March 14, 1893, to Carter's credit of $7,000 in bills.

Major Adams, a member of the Board, examined Carter as to that entry. (Board Record Vol. 1), p. 296 as follows:

"(By Major Adams.) Q. March 14, 1893, $7,000. How was that amount deposited?

Carter: A. *I imagine that it was cash; it don't state here in this memorandum book.*

Q. The deposit was made by letter; can you tell the source from which the money was obtained?

A. I don't remember, but I can find out."

(It appears that the letter Major Adams referred to was an acknowledgment to Carter by letter of a deposit he had made

in person, Carter's account with the Union Trust Company being a correspondence account not kept by pass-book, Wyman Vol. 3, p. 1063.)

Carter's attention on cross-examination before Examiner Wyman, was called to this statement he had made before the Board and he testified (Wyman Vol. 3), p. 1064:

> "(By Mr. Erwin.) Q. The memorandum book that you are referring to there were these diaries that you produced, were they not?
>
> A. Yes, sir.
>
> Q. You were allowed during that examination to take the diaries out of the box before the Board of Inquiry and refer to them, and you referred to it there?
>
> A. I had that diary in my hand at that time."

Carter now produces the diary entry for March 14, 1893, and it reads as follows:

> "Ther. Mod. Tues. Mar. 14, 1893. Wea. Fair. Busy arranging affairs down town; dined W. W. gave me 15 $500 *bills;* gave one to Stanton & deposited balance. Got them G. C. D. A. M."

According to Carter's testimony before the Board with the diary in his hand, he then said that the diary did not show whether the deposit of $7,000 was *cash or not,* and he could not then tell the source, while he now produces the diary entry in which he states there were 15 $500 *bills;* also that they were given to him March 14, 1893, by Mr. Westcott, and also stating that their source "Got them G. C. D." and which he now says meant that Westcott got the 15 $500 bills from the Grand Central Depot, New York, and that he, Carter, was with Westcott when he obtained them. (Wyman Vol. 3) pp. 1010-1011.

Here is positive evidence from the record that the diary entries have been tampered with by additions in Carter's handwriting since the Board hearing.

The diaries were returned to Carter by General Barr at an

early stage of the Court Martial trial. Testimony of General Barr. (Wyman Vol. 9) p. 4578. But Carter admits he never used them before the Court Martial. (Wyman Vol. 3) p. 1832 to 1834.

I. Stanton Carter Testimony Before Court Martial.

But Carter called his brother, *I. Stanton Carter*, as a witness before the Court Martial, and the latter testified (Court Martial Vol. 17), p. 3708-9, that he was with Carter and Westcott about the middle of March 1893, at a bank in New York and Westcott got $7,500 in 15 $500 bills, and gave I. Stanton Carter $500 and gave Carter the balance, $7,000.

We can see, therefore, how Carter amended his diary before offering it in evidence in 1905, to corroborate this statement of I. Stanton Carter before the Court Martial.

Another Changed Entry in Diary.

In the statements of Carter's bank account with the Union Trust Company which were found in his file case, there is entry of deposits to Carter's credit April 14, 1893, of $400 and April 15, 1893, $3,000. See Exhibit 368 (Court Martial).

Carter was questioned about those deposits by the Board, and in reply (Board Rec. Vol. 1), p. 296 quoted his memorandum from his diary as follows:

> "In town this morning: arranged about some of Mr. Westcott's affairs and went up to dinner in the evening" said "That (referring to the deposits shown in the accounts) must have been made by me."

His diary entry now reads as follows:

"Friday 14"

"Down town. Arranged with R. F. W. about bonds & went up to dinner evening. Met E. afternoon. With W. A. M. at G. C. D. He got 15; gave me 500."

Carter testified (Wyman Vol. 2), p. 402:

"Q. Does the first part of that entry in your diary under date of April 14, 1893, refer to this answer wherein you said before the Board of Engineers: "In town this morning; arranged about some of Mr. Westcott's affairs and went up to dinner in the evening'?

A. Yes, sir; I held this book in my hand and gave the substance of the entry until I came to the paragraph which referred to a lady; then I gave nothing further."

But all these diary entries are in pencil, easily erased and written over, and the entry as it now stands does not follow the language quoted by Carter to the Board, and to the substance of the language quoted is now added the figures and letters which Carter now interprets as meaning that Westcott got $15,000 in currency from the Grand Central Depot and gave Carter $500 of it, and that he, Carter, was with Westcott when he got the $15,000 (Wyman Vol. 2), p. 166. Moreover, no lady's name is mentioned in the diary as it now stands, a mere reference to having met "E" in the afternoon.

Major Gillette's Examination of the Diaries.

Major C. E. Gillette, testified (Wyman Vol. 9), p. 4627-4628 that at the time the Board of Inquiry was sitting in New York, Colonel Gillespie directed him to examine Captain Carter's diaries.

"A. I read each of those diaries through entirely and made notes. I read them in the reverse order, I read 1896, then 1895, then 1894. I began on 1893. I am unable to state whether I read all of 1893 or whether I read any of 1891 and '92.

Q. Did you make memorandums, take memorandums from those books, any of them, about entries appearing in those books at that time?

A. Yes; I took all the entries that referred to Captain Carter being absent from his station. I took entries of anything that appeared to me to bear upon the facts that had up to that time appeared against his rec-

ord as an officer, anything in the nature of charges that I had made against him, I noted whatever was in the diaries bearing on those facts."

Major Gillette testified he turned over these memoranda which he made to Mr. Edward I. Johnson, shortly after the time that Greene & Gaynor indictments were found in 1889. Vol 18 P8923-4

Mr. Edward I. Johnson testified (Wyman Vol. 9), p. 4672-4673:

That Major Gillette turned over these memoranda to him early in 1900 and they remained in his possession until produced before Examiner Wyman and identified by Major Gillette. These memoranda were at the request of defendant's counsel attached to the record as Exhibit 655 (Wyman Vol. 9), p. 4637. Vol 18 P8908

Major Gillette points out numerous changes in the diaries as they now are relating to both engineering and finances, from what they were when he examined them (Wyman Vol. 9), p. 4630-4. Vol 18 P8947-48

He testified (Wyman Vol. 9), p. 4633: Vol 18 P8897

"I will also state that there were no finances in the diaries of 1893, 1894, 1895 or 1896, and to the best of my memory not in any of the other three.

Q. By finances you mean entries relating to finances?

A. Entries relating to finances in any way, there were no entries containing the word "Daddy" and no entries concerning finances in any of the diaries or parts of diaries that I read."

Carter stated before the Court Martial his diaries would not contain such information. Vol 8 P4098

(Wyman Vol. 3) p. 1744: Vol 14 P6443

"Q. (Mr. Erwin.) Referring now to your testimony before the Court Martial at page 4455, relative to the fact as to whether you had submitted statements to Mr. Westcott of your business transactions in his affairs, you state:

'I told you on the contrary that I had given Mr. Westcott statements. Q. Orally? A. I think I have also

given to him in writing as well. Q. No record of them to be found anywhere? A. If there is any record, you have it. Q. I haven't it. Is there any other place where it could be found? You have a great many of your papers that were turned over to you? A. I have nothing of that character. Q. You have your diaries? A. The copy of any transaction would not be in there. I only suggested that inasmuch as I have never made any such statement, I thought perhaps you might like to change it. Q. Very will, if that is the way the record stands, we will have that changed. I express a willingness to change it.'

Now, Captain Carter, you had, according to the record, those papers already turned over to you by the Court Martial prior to this testimony at page 4455, April 16, 1898, and you were on trial there for a Court Martial offense, and it was a serious matter, and you state there that these diaries would not contain the information about your dealings there, at that time. Repeatedly there are questions asked you here about transactions which you say that you could not explain, and all that time with your own knowledge, these diaries that you now bring up with these various entries were known by you to have been turned over to your counsel, and you had them right there in Savannah. Why did you not utilize this information before the Court Martial that you now claim was in these diaries?

A. It never occurred to me to look into those diaries for this, and it never would have occurred subsequently if Mr. Stone had not suggested that I sit down and examine every single scrap of paper of every description that I have; and I now find that if I had thought to have opened those boxes and gone through them, I would have found documentary evidence which would have absolutely destroyed the suggestions of the prosecution, but it never occurred to me to look into them; I had everything in the charge of my attorneys. I had fogrotten they were there. I never thought that I had put down anything of that kind. Mr. Stone suggested to me, and I started in and looked through every single scrap of paper and every envelope, no matter how large or how small searching for every single thing I could find; and then when I found this documentary evidence, I turned it over to my attorney and he began to see how that

P. 574. Note

Carter testified before Court Martial relative to the alleged transactions between him and Westcott (Vol. 8, p. 4114):

"Q. And you have no record to-day to show what your transactions were?

A. I have only the record you have."

was arrived at. That is how this statement was arrived at, when I found all this documentary evidence; when we found this, we were able to construct this account; I do not believe we could have stated it without the diaries, I did not remember they contained anything; I never thought they would.

Q. I call your attention to your testimony before the Court Martial April 12, 1898, page 4086—

Mr. Stone: Before you go on to the other question. You said something about making correct statements to Mr. Westcott or turning them back to him.

Mr. Erwin: No; I did not, I did not understand it that way.

Captain Carter: No; I did not understand it that way.

Q. (Continuing.) As follows:"

(Wayman Vol. 3) p. 1755:

"Q. (Mr. Erwin.) Captain Carter, on page 4414 of the Court Martial record is this question: "December 18th, Letter of advice, $1,400.00. Do you know where that came from'—that refers to the entry of December 18, 1891. 'A. It was on some of Mr. Westcott's affairs, but just where it came from, of course, I cannot tell. Q. Was it a present to you? A. That I cannot tell. It may have been—you see I was trying to save from wreck a lot of property which he had given to another son-in-law, and it may have been from the remnants of that smash up; I don't know.'

Now, you have offered in evidence here a diary entry under date of December 18, 1891, as follows: 'Saw Husted & went to Orange. Dined at Club with Crozier. Dp. 1400 of M's funds in U. T. Wrote to her.' And your testimony explains that that was $1,400.00 of your wife's funds deposited by you in the Union Trust Company. Now, at the Court Martial you were asked to explain that and you were unable to explain it, and you had your diaries turned over to you at that time; and with all these matters coming up, Captain Carter, have you any other explanation than that you have already given, why you did not produce those diaries at that time, if those entries were in them, at that time?

A. These entries were in them, because they were seen by my attorney, Mr. Stone.

Q. Mr. Stone was not your attorney at that time?

A. Before they reached my possession, and they were also in them for the reason that the Government representatives had access to them and doubtless made copies of my diaries; and I have no doubt that Major Adams, who secretly made copies of my private letters for his private delectation, has in his possession copies of my diaries, but the reason I did not do that—as I have explained—in this, that it never occurred to me that I should find any entries of that character in my diaries, I knew that I kept memoranda on my check stubs and I had entirely forgotten that these entries there at time to time had been made in these diaries; and so that box containing my diaries and my professional notes, which had been turned over by Colonel Barr to my attorneys, was never opened and never seen by me till years afterward, when it was sent to me by Stone, and I found in there matters relating to the work which I knew nothing about. Now, I have examined them in detail, but at that time, as I have explained to you, I never thought of looking at them, because it never occurred to me there would be anything in them."

Kept No Record.

Vol 14 6414

(Wyman Vol. 3) p. 1746:

"Q. By Mr. Erwin.) I call your attention to your testimony before the Court Martial April 12, 1898, p. 4086:

'Q. You never kept any debit and credit account with any investment that you made? A. I don't know whether I did or not; I don't remember any, because, usually, if I got anything I paid for it, that was all there is to it, and it wouldn't help me any to have it. Q. And you kept no books whatever to show your financial transactions, if you made a purchase of stock of any kind, no place where you made an entry of it? A. I never purchased enough to make it any object. I suppose if I had been in business, that I would have done so. I presume business men do that, but I can always carry in my head the things I had. Q. You have made some business investments, have you not? A. You mean for myself? Q. Yes. A. A few; yes, sir. Q. Have

you made any record in any book of those? A. Not that I remember. I took the little investments that I had and put them aside, either in the form of stock, or whatever it was, and that was enough; I had that, and that told me what I owned.'

Now, Captain Carter, that was your testimony before the Court Martial, was it not?

A. That is correct.

Q. At that time you stated that you kept no books and you made no entry in any book of any of these transactions. Your diaries were in the possession of yourself, they had been turned over to your counsel for you and you knew that they had been turned over. Your diaries run right straight along, and now appear to be full of entries relating to financial transactions. Why is it that you answered that to the Court Martial, if these things were in your diaries at that time?

A. Because, as I explained to you, I never thought of their being in my diaries and never would have thought of it to this day if Mr. Stone had not suggested that it was worth while to examine everything. I thought that all the record I had made had been kept on the check stubs."

Vol. 14 F 6415

(Wyman Vol. 3) p. 1748:

"Q. Well, now, in your testimony before the Court Martial on April 18, 1898, record 4474, you were questioned about what occurred between you and Mr. Westcott after he returned from Europe, when he returned in 1896, about any statements to him, written statements showing your transactions while he had been gone, and then you were questioned as follows:

'Q. What security was it to you in letter press letters you had written him in his copy book? A. After he came back, I did not care for any of his correspondence. It was only that I might know when he was away what I had sent to him. Q. And you have no record to-day to show what your transactions were? A. I only have the record that you have.'

Now, that was at a time when you had been given back these diaries, as the records shows, and your attention had been called to the fact that you had diaries, and you state there that the only records you had were these books in the possession of the Government, which

were your check stub books. You so testified, as there stated, before the Court Martial?

A. I testified in the matter in which you—I mean in the words which you have read, but the question was with regard to the statements that I had made to him and I said that I had made statements to him, and they asked me what record I had, and I said I did not have them, and as I have already stated, I took these statements up when he came back, and he still has them, I am informed, or that he has destroyed them, and I did not suppose there would be anything in the diaries, in fact there is not very much. I found little by little which added to what I found upon papers and in the books which had been returned gave me sufficient to reconstruct this account.

Mr. Stone: Mr. Erwin, have you got this statement that Captain Carter furnished Mr. Westcott of transactions while Mr. Westcott was in Europe in 1895?

Mr. Erwin: I have got no such statement and have no knowledge that any such statements were ever sent to Mr. Westcott, and the only information I have of it is Captain Carter's statement in one place where he says he sent them, and in another place, as I understand it, he says he did not send them.

Captain Carter: That is not true. If you will point that out, I will point out what I did say. I said on page 4475 of the Court Martial proceedings: 'I think I sent him statements every month. It was my custom to send him whenever I did anything, and in addition to that to send him a statement monthly of about what I was doing.'

Then again on page 4455 of the Court Martial proceedings I said to the Judge Advocate, who had misstated the record: 'I told you on the contrary that I had given Mr. Westcott statements.' I never made any statement that I had not given him statements."

Vol. 14 864-7

(Wyman Vol. 3) p. 1767:

"Q. I call your attention to your testimony before the Court Martial at page 4424:

'Q. No statement of accounts between you and your father-in-law at that time? A. There were no regular books. Q. Just conversations? A. No. We used to sit down and figure out things at nights sitting down in

his smoking room. He treated me just like he would his own son, and he never exacted any formal statement.'

That was your testimony before the Court Martial, was it not?

A. That was correct.

Q. I call your attention to your testimony before the Court Martial at page 4427, as follows:

'Q. Did you make any statement to Mr. Westcott during the existence of that account, showing how much had been placed to your credit of his money? A. I do not know that I gave him any of the details. Of course I used to tell him about what I was using, because I wanted him to be satisfied with it, and to call me down in case I was using too much; but for all of the details of my expenditures I would not tell him; I would just tell him the sum, the amounts.'

You so testified, did you not?

A. That is correct.

Q. Now, you claim that you made him monthly statements?

A. Oh, well, that was with regard to his property when I was acting as his attorney, when he was in Europe.

Q. That is the very time we are talking about here.

A. Yes, and I explained that the statements I made to him were more for the purpose of keeping check on his other agents; I did not give him details of all the money I used for my own purposes, but he knew the amounts, the sums. For instance, if I drew out say $300 in cash, I would not tell Mr. Westcott how I expended that if it was charged up against me."

The Charges Before The Court Martial.

The more serious charges for which Captain Carter was tried and convicted by the Court Martial, were among others:

(1) Conspiracy with the contractors to defraud the United States.

(2) Approving for payment fraudulent accounts.

(3) Embezzlement.

While he was being tried only for occurrences under the 1896 contracts, because he had pleaded the statute of limitations on prior contracts, evidence was admitted of acts tending to show fraud through a series of years prior to 1896. (Court Martial Vol. 3) ~~p. 549 et seq.~~

Carter's Case, 22 Opinions, Attorney General pp. 589-596.

The whole course of the prosecution was to show that Carter did not get the large sums of money he was shown to have spent from Mr. Westcott, but from the contractors.

Carter was called upon time and time again to explain before the Court Martial specific financial transactions shown in the accounts then accessible to the court, which he now undertakes to explain by these Diary entries and yet he never produced them or referred to any such entries before the Court Martial.

It is preposterous to credit Carter's statement that he had all these Diaries in his hand before the Board in September, 1897, and referred to the entries then, and that he had forgotten their existence in April, 1898, when he was being called upon to substantiate his claims as to these transactions and could not.

If there ever was a time to produce them, then was the time.

LIST OF CARTER'S MEMORANDUM EXHIBITS.

Defendant's Exhibit 10-A (Wyman), Carter's Diary for 1891. Vol. 19 (9007-36)

Defendant's Exhibit 10-B (Wyman), Carter's Diary for 1892. Vol. 19 (9036-66)

Defendant's Exhibit 10-C (Wyman), Carter's Diary for 1893. Vol. 19 (9066-94)

Defendant's Exhibit 10-D (Wyman), Carter's Diary for 1894. Vol. 19 P 9094-9121

Defendant's Exhibit 10-E (Wyman), Carter's Diary for 1895. Vol 19 P 9124-42

Defendant's Exhibit 10-F (Wyman), Carter's Diary for 1896. Vol. 19 P 9142-64

Defendant's Exhibit 10-G (Wyman), Carter's Diary for 1897. Vol. 19 P 9164-87

The first six which were the memorandum books Carter claims were returned to his attorneys for him with other papers at the Court Martial trial were produced before the Examiner by Carter January 16, 1905. (Wyman Vol. 2) p. 22 and 25. Vol 12 P 5356 and 5370

The objection of the Government to their admission in evidence is stated (Wyman Vol. 2), p. 24. Vol 12 P 5370 A typewritten volume of what purports to be copies of above was delivered by counsel of defendants to counsel for complainant at same time (Wyman Vol. 2), p. 25. Vol 12 P 5371 Defendant's Exhibit 10-G, Carter's Diary for 1897. Carter testified was never in the possession of the Government (Wyman Vol. 2), p. 26. Vol 12 P 5372 It was identified as Defendant's Exhibit 10-G (Wyman Vol. 2), p. 26, but not specially offered in evidence, but entries from it were later offered in the account made up by Vol 12 P 5376 by Carter from the diaries, and objected to by the Government then on some ground (Wyman Vol. 2), p. 80 and 269. Vol 14 P 5542 and 5615

Defendant's Exhibit 12 (Wyman). Vol 14 P 6301-2 Vol 12 P 5374-5

Pencil memorandum on back of a statement signed R. F. Westcott, dated Oct. 23, 1891, relative to affairs of Westcott's son-in-law, Charles Conquest, which Carter produced from his own custody Jan. 16, 1905, but which statement Carter says was returned to him by Gen. Barr at Court Martial. The pencil memorandum consists of the figures "50000

5 "

which Carter says he, Carter, put

on the statement Oct. 24, 1891, to indicate Westcott had promised Mrs. Carter $50,000 and had given her $5,000 on that day.

Offered in evidence (Wyman Vol. 2) p. 29. Vol 12 P5375

Objected to by Government (Wyman Vol. 2) p. 30. Vol. 12 P

Defendant's Exhibit 13 (Wyman) Vol. 14 P6502

Consisting of 4 documents fastened together, produced by Carter Jan. 16, 1905, with pencil memoranda in his own handwriting, and which documents Carter claims were returned to him at the Court Martial trial by Gen. Barr, to-wit:

(1) Letter of Thomas Cook & Son, to Capt. Carter, dated Oct. 5, 1891, about a proposed trip around the world.

(2) Letter same to same, same date, same subject.

(3) Letter of E. V. Skinner to Carter, dated Oct. 6, 1891, about a proposed trip around the world.

On the back of the last is written in pencil in Carter's handwriting reading:

"10/24/91. Vol. 14 P6506

Asked Daddy to get T. C. & I bonds for Marguerite.

He takes 45 M of her money.

We take 5 M to Sav'h."

It will be observed that this memorandum is written on a letter, which is dated 18 days prior to the purported date of the memorandum.

(4) Time card with nothing on it.

The documents offered in evidence by Defendant's (Wyman Vol. 2), p. 32. Vol 12 P5378

Objected to by Government (Wyman Vol. 2), p. 33. Vol 12 P5379

Defendant's Exhibit 14 (Wyman. Vol. 14 P6506

Letter E. P. Alexander, to Carter, dated New York, Oct. 30, 1891, in relation to getting an appropriation by Congress for river and harbor work at Savannah. On the back of which are written in Carter's handwriting the figures:

"50
5

45"

P. 582. Note

Besides the above two pencil memorandums on letters by which Carter tries to establish this alleged $50,000 gift, Carter also offers another memorandum from his diary under date of Oct. 24, 1891 (Vol. 19, p. 9031): "At Orange. Said good bye to family. Ordered 5 P. C. & I. bonds. Left midnight for Atlanta because no stateroom elsewhere. Took 50M which W. gave to M. 45 her trunk and 5 to Sav."

which Carter says refer to the same thing as the memorandum of Defendant's Exhibit 12 and 13 above.
Vol. 1 p. 539 Offered in evidence (Wyman Vol. 2) p. 50.
" 539 Objected to by Government (Wyman Vol. 2) p. 51.
This letter comes from Box B-31.

Carter Caught Writing on Papers.

It does not appear otherwise than by Carter's testimony what the figures mean, nor when they were put on the letter. Carter was, during the whole summer of 1904, engaged in going over the papers in Box B-31, and making memoranda therefrom. He was caught writing on some of the papers by the young man, Mr. Montgomery, employed to watch the papers while he was examining them, but he claimed that it was an innocent indorsement on one of the papers of a direction to the stenographer "Don't copy", and he picked out a paper with that written on it by him. (Wyman Vol. 2) pp. 38 and 41.

That he did not write other things depends solely upon his own testimony.

According to his present testimony, the promise of $50,000 and cash of $5,000 to which he claims the cabalistic figures refer, was given him at Orange, N. J., on October 24, 1891. He now produces a "diary" entry under that date to corroborate it. Also he produces from his own custody Exhibit 13, with the pencil memorandum on it, to corroborate it, and claims all these entries were made at the time October 24, 1891.

According to his diary entries, he was back in Savannah October 29, 1891. Why should a letter written by E. P. Alexander from New York, dated October 30, 1891, have on it any memorandum relating to an alleged gift by Westcott to him six days prior thereto?

Carter evidently was trying to manufacture memoranda on papers in the Government's custody to give color to the outside memoranda he produced.

Defendant's Exhibit 44. Vol. 14 Pl. 528

Letters of Administration granted in New York to O. M. Carter, Jan. 2, 1893, on estate of M. W. Carter, on which is endorsed certain pencil memoranda in Carter's handwriting, produced by Carter from his own custody Jan. 17, 1905. Carter claims this was returned to him by Gen. Barr at the Court Martial trial. Vol. 14 Pl. 538 Vol. 14 Pl. 653

Offered in evidence (Wyman Vol. 2) p. 35.

Memorandum objected to by Government (Wyman Vol. 14 Pl. 538 **Vol. 2) p. 35.**

The memorandum purports to be a financial statement made by Carter in pencil of certain gifts to him by Westcott, and is intended to account for $12,900 in currency deposited to his own credit on Jan. 3, 189%, and $15,850 currency deposited by him Feb. 10, 1893. Vol. 14 Pl. 534

Defendant's Exhibit 47. Vol. 14 Pl. 536

(1) A letter dated Savannah, Ga., 19 Janvier 1894, written in French, signed L. Charrier, with a bill for tution for French lessons.

(2) A little slip of loose white paper about 5-1/4 by 3 inches in dimension, on which is written 8 lines of French poetry signed "Charrier 2/7/93." On the back of this is a pencil memorandum in Carter's handwriting as follows:

"2/11/93.

16500	=	m
350	=	bal Daddy.
16850		
15850		N. Y. deps "
1000		Sav. Bk.

This paper was produced from Box B-31 on Jan. 16, 1905, under the following circumstances:

Carter Claims He Found It In Box B-31 In Summer of 1904. Vol. 14 Pl. 538 (Wyman Vol. 2) page 37:

"By Mr. Erwin:

Q. Captain Carter, this memorandum that is apparently French poetry, it bears date '2/7/93,' does not appear to have anything to do with these other two letters, or rather the letter of January 19, 1894, and the bill of

January, 1894; the poetry bears date the year before, doesn't it?

A. Yes, sir; nearly a year.

Q. And when you found it in these papers here in the box, that is, found the poetry memorandum, it was not attached to the letters?

A. It was in underneath, apparently it had slipped in when I found it, but it was not fastened to the others.

Mr. Stone. I do not claim it has any connection with the other two letters, only it seems to be fastened mechanically to them. I have no desire to introduce the other two letters.

Q. You had access to these papers during the last six months here, while they were in custody of Mr. Johnson, didn't you, looking them over?

A. Yes, sir; occasionally when I desired.

Q. And that is when you found these letters?

A. Yes, sir.

Q. On one or more occasions did you not make some memorandum on any of these papers?

A. No, sir; I never made any memorandum on any paper, except on a letter of Mr. Westcott's which had a 'kiss' marked on it, that I told the stenographer 'don't copy.' I can show you the letter if you wish to see it.

Mr. Erwin. I know about that particular one.

Q. On one of the letters you made a memorandum you say?

A. 'Don't copy'; yes, I think were the words I used.

Q. You had a stenographer here making copies of these letters?

A. Yes.

Vol. 2 P. 386

(Wyman Vol. 2) p. 40:

"By Mr. Erwin:

Q. Captain Carter, the papers when you examined them were here in this room where we are having this examination, the library of the Circuit Court of Appeals?

A. Yes.

Q. Mr. Edward I. Johnson was in charge of the papers here?

A. Yes.

Q. And you say either he or somebody else, the other gentleman that was here was a young man by the name of Montgomery, wasn't it?

A. I don't know that I knew his name, I remember the young man, I don't know that I would be sure that is his name; there were two, though, there was one other young man present; that is, when Mr. McPherson and I examined papers another person was present.

Q. I mean that you were not by yourself any time, you say that either two or one and sometimes more, that on one or two occasions Mr. Montgomery was in here by himself, wasn't he?

A. Yes; I believe so, sometimes, although he and Mr. Johnson were here; and I believe once or twice another young man whom I do not know sat here and watched me.

Q. Well, did not Mr. Johnson call your attention to the fact that when he left Mr. Montgomery with you on one occasion, that Mr. Montgomery reported to him that you had made some memorandums on a paper and called your attention to the fact that you ought not to do it?

A. Yes; he did; it was not on the back of a paper, it was right on the side of a paragraph that I did not want the stenographer to copy; I was looking at and selecting papers I wanted her to copy and I just wrote: 'Don't copy.' I said I was very sorry and that it would not occur again."

REBUTTAL TESTIMONY OF MR. E. I. JOHNSON.

The French Poem and Memorandum Thereon Not In Box Previous to Carter's Going Through The Papers.

Vol. 18 8914

(Wyman Vol. 9) p. 4658:

"Q. (Mr. Erwin). Mr. Johnson, after Government closed its testimony on the direct examination, in February, 1894, you were left in charge of all these original documents in Box B-31 in Chicago were you not?

A. I was.

Q. Where did you have the papers?

A. I had some of the papers in the court library, some of the boxes, and other boxes in a room adjoining the court library, separate from it.

Q. You mean that you had them in the library in which was kept the law books and so forth in connection with the United States Court, in the Monadnock Build-

ing, in the City of Chicago, and in the room adjoining, do you not?

A. Yes.

Q. We had been having the sittings of the Examiner take place in that library room, had we not?

A. We had.

Q. And some of the boxes containing the papers in your charge were kept in that library room, and some of the boxes were kept in an adjoining room connected with the office of the Circuit Court of Appeals?

A. Yes.

Q. You were left in charge at Chicago of those papers for the purpose of allowing Captain Carter to have access to the papers in the preparation of this defense in the case, were you not?

A. I was in charge of the papers at Chicago and instructed to allow Captain Carter access to them.

Q. That was the purpose of your remaining there for several months, was it not?

A. That was the purpose of my remaining there.

Q. Did Captain Carter visit the library room and consult with those papers from time to time for several months?

A. He did.

Q. During what length of period did that go on prior to his taking testimony in Chicago?

A. Up to February, 1905, when the defense commenced to take testimony in Chicago, except the times that I was absent. I was absent a short time in Virginia.

Q. In the fall?

A. In the fall of 1904.

Mr. Stone. As I understand it, your question is for the purpose of showing that Carter had access to the papers, and not for the purpose of showing for any particular length of time?

Q. (Mr. Erwin). You were absent during that period for only a very short time?

A. Yes.

Mr. Stone. You were here in New York in the fall of 1904 for a considerable period, were you not?

The Witness. Except for a short period I was absent in Virginia and another in New York in the fall of 1904.

Q. (Mr. Erwin). Did Captain Carter visit the library room and inspect those papers and particularly the

papers from Box B-31 from time to time, during the summer of 1904 and during all that period you were there in Chicago?

A. He did.

Q. I was not in Chicago during all that period?

A. You were not.

Q. Did you have under you, employed by me, a young man by the name of A. W. Montgomery to assist you in keeping charge of the papers during that period that Captain Carter was from time to time inspecting the papers?

A. I did.

Q. Mr. Montgomery was a young man who had been just pervious to his employment by me connected with the office of the Clerk of the Circuit Court of Appeals there in Chicago, was he not?

A. Yes.

Q. In looking at these papers from time to time, did Captain Carter request that the papers from Box B-31 all be taken out and put upon the table where he could go over them and examine them?

A. He did, he requested certain letter files and certain letter books to be taken out and certain bills and certain of the contents be taken out and placed before him.

Q. You had quite a large number of books and papers and documents in your charge, large chests, at that time, did you not?

A. I had.

Q. In addition to the papers in Box B-31?

A. Yes.

Q. And Captain Carter from time to time asked to consult those papers?

A. He did.

Q. Did that necessitate your leaving the library room from time to time when he called for certain papers which were in the boxes in the adjoining room?

A. It did.

Q. When you went out of the library room and left Captain Carter there, did you from time to time leave these papers on the table if Captain Carter was examining them?

A. I did.

Q. In those cases did you leave this young man, Mr.

Montgomery, in there to keep a general supervision over those papers to see that nothing improper was done with respect to the papers?

A. I did.

Q. I will ask you whether or not Captain Carter from time to time would look over these papers and have his own book or memorandum pad and pencil with him and take note of the various papers and documents that he was inspecting?

A. He did, and he also had a stenographer with him frequently.

Q. Sometimes did and sometimes did not have a stenographer?

A. Sometimes did, sometimes did not.

Mr. Stone. Did he ever have any stenographer with him at any time except a young lady from Mr. Wyman's, the Examiner's office?

The Witness. I do not think she was there at all, it was another stenographer.

Mr. Stone. Did he ever have more than one, that is, was there ever more than one present as stenographer there?

The Witness. I do not recall that there was.

Mr. Stone. That stenographer was there for the purpose of copying such papers as he desired copied, was she not?

The Witness. I really do not know the instructions he gave her but she was copying a great many of the papers.

Mr. Stone. That is all she did there, was copying papers?

The Witness. I was not close enough up to see exactly what she was doing. He had access to the papers, I did not want to take memoranda of anything of a private nature.

Mr. Stone. I did not ask you what his private instructions were, I meant what the stenographer was doing there.

The Witness. She appeared to be taking copies and notes such as he may have given to her, but I was not in close enough proximity to tell what his instructions were to her.

Q. (Mr. Erwin) Those visits of Captain Carter continued off and on from day to day sometimes, and then during certain periods he would not come over at all,

but from time to time he would come and that inspection and copying of papers, and notes of things, continued for several months?

A. It did.

Q. I will ask you whether or not on one occasion during that period when Captain Carter had those papers from Box B-31 out before him on the table when you had been absent from the room and returned, whether Mr. Montgomery made any statement to you? I do not ask you what the statement is, but I ask you whether he did make a statement to you relative to Captain Carter?

A. He did.

Mr. Stone. I would like to have him say what the statement was.

Q. (Mr. Erwin). Mr. Stone asks that you state it; you can state it.

A. Mr. Montgomery reported to me that Captain Carter had made some notations on some of the papers. He could not tell me what they were, so I went to Captain Carter so I told him about it.

Q. Told him what Mr. Montgomery told you?

A. What he had said, and he said that he had made a notation but it was only on one piece of paper, and he exhibited to me a paper which he claimed he had made the notation on. I told him he should not have done it, and he said he would not do it any more.

Mr. Stone. What was the notation?

Q. (Mr. Erwin). I call your attention to this paper marked 'Defendant's Exhibit 26, 1/17/05. R. H. W.' which is a letter which apparently does not bear any address, but which is addressed 'Dear Oberlin,' and signed 'Daddy.' I have the letter in my hand, you called my attention to it, this is the letter?

A. It is.

Q. Now, on that letter, on one of the sheets of the letter, which is apparently on the last page of the letter, in the upper right hand corner there appears now in pencil the words 'Do not copy this page.' Is that the pencil memorandum that Captain Carter told you he made at that time, and which he called your attention to as being the writing that he had done when Mr. Montgomery had seen him writing on the papers?

A. It is."

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(Wyman Vol. 9) pp. 4666-4671:

"Q. (Mr. Erwin). Now, Mr. Johnson, while Captain Carter was looking over those papers during that period he was inspecting them there, did he read off in your presence a piece of French poetry which is now marked 'Defendant's Exhibit 47, 1/16/05, R. H. W.'?

A. He did.

Q. Did you look at the paper at the time he took it up?

A I did not.

Q. I will ask you whether or not on January 16, 1905, when Captain Carter was on the stand before Examiner Wyman in Chicago, he called to have put upon the table the papers from Box B-31, including letters and so forth from that box, asked to have them brought out and laid on the table for his examination then?

A. Certain letters, yes.

Q. I will ask you whether or not there was at that time taken out of Box B-31 a letter signed 'L. Charrier' dated 19 January, 1894, and a tuition bill dated January 18, 1894, and this paper now marked Defendant's Exhibit 47, and which three papers were at that time attached together by a little metal clasp?

A. I did.

Q. Do you have any knowledge of ever having seen, yourself, this little slip of paper containing the French poetry and a memorandum on the back of it, prior to its production at that time when you examined it?

A. I had not examined it prior to its production at that time.

Q. On two or three occasions prior to that time, Captain Carter in looking over papers had referred to, or read something from that French poem, hadn't he?

A. He translated it.

Q. In your presence?

A. In my presence, he had not called my attention to it, but he translated it to the young woman stenographer and also to Mr. McPherson.

Q. Did you go through those papers in detail a number of times when the Attorney General was reviewing the Court Martial record?

A. I did.

Q. That was in 1899?

A. 1899.

Q. Those papers continued in your possession up to the present time?

A. Up to the present time.

Q. Had you made repeated examinations of every paper in that box in detail, examining them for the purpose of seeing what was on them, and all the particulars about every paper, time and time again in the various proceedings of which you had charge in reference to these trials of Greene & Gaynor and the civil suits?

A. I had.

Q. Do you remember ever having seen that little piece of French poetry, or that slip of paper at any time in any of your examinations of the papers in that box?

A. I had not, except when Captain Carter the first time he called my attention to it.

Q. Did you examine it then?

A. I did not.

Q. You just heard him read it?

A. I just heard him read it.

Q. And translate a little piece of French poetry while he was looking over the papers?

A. I did.

Q. You say he did that two or three times on different occasions?

A. He did.

Q. Did he refer at those times to these pencil memorandums on there?

A. He did not.

Mr. Stone. Can you read French?

The Witness. I cannot.

Q. (Mr. Erwin). Did you examine all those papers in that box on a number of different occasions while you were making up an analysis of the accounts and financial transactions of Captain Carter?

A. I did.

Q. Both for the Attorney General in the Greene-Gaynor proceedings and in the civil proceedings since then?

A. Yes, I examined them a great many times.

Q. Did you ever see in there a paper with a memorandum on it, a similar memorandum to the one now on the back of this Defendant's Exhibit 47?

A. I did not.

Q. Captain Carter stated at the time this was offered in evidence that when he found this little paper, the

French poetry, that it was not attached to this L. Charrier letter and tuition bill, did he not?

A. He did.

Q. And that he put it with them with a little metal clasp on it?

A. I do not know as he stated that.

Q. He fastened them together, didn't he?

A. I do not know as he stated that; when I produced them they were in that state.

Q. When you produced it, it did have a metal clasp on it?

A. Yes.

Q. You do not remember whether he put the metal clasp on?

A. No.

Q. But he stated when he found it, it was loose?

A. He stated that when he found it it was loose, I do recollect.

Mr. Stone. You are sure of that, are you?

The Witness. Yes.

Mr. Stone. He so stated on the stand?

The Witness. He so stated on the stand; yes. I do know that this particular bill and this letter attached. I had looked at, I remember that particularly.

Q. (Mr. Erwin.) You did have that L. Charrier letter of January 19, 1894, and the tuition bill in Box-B 31 all the time while it was in your possession?

A. Yes, it was impressed on my mind particularly because he had on different occasions purchased wine of L. Charrier and had taken these lessons.

Q. Did you give these papers such an examination on these various occasions when you examined these papers in detail in this box, that if that paper had been in there you would have seen those memorandums upon it?

A. I gave it such and every other paper in the box such examination that if any paper had any such memorandum on it I would have seen it; but I would not undertake to state specifically each paper that is in that box.

Q. After Captain Carter testified on January 16, 1905, about this paper which is Defendant's Exhibit 47, did you go through Box B-31 and examine the remaining papers in there and find any other paper in there which had been in there all the time that had memorandums on

them, put on by Captain Carter after he commenced examining the papers, any other paper than the ones that we have already referred to?

A. I found three letters of C. P. Goodyear to Captain O. M. Carter, without date, three separate pieces of paper, to which is attached a small piece of paper pinned on, on which is a notation in Captain Carter's handwriting: 'Copy these three letters without date; put on the same pencil memo.'

Q. That was a little piece of paper pinned onto the corner of these three letters, pinned on the first letter in order, and upon that piece of paper these words were written in lead pencil?

A. Yes.

Q. In whose handwriting?

A. Captain Carter's.

Mr. Stone: I ask to have that put in evidence.

Mr. Erwin: I am going to have it in evidence.

Mr. Stone: Also the memorandum on the other letter about 'don't copy.'

Mr. Erwin: That is in the evidence; I propese to put these in evidence when I get to that point.

Q. (Mr. Erwin). Do you know when Captain Carter put that memorandum there, on this Goodyear letter?

A. I do not know.

Q. Was it called to your attention by anybody that he had put it there, till you had found it there after this other paper?

A. No.

Mr. Erwin: I offer in evidence this little slip of paper which is fastened on these Goodyear letters, and which is written in lead pencil as testified in Captain Carter's handwriting; the little slip of paper being about 2-1/2 inches on one side and 2-1/2 on the other, with part of it torn off on the lower right hand corner, and ask that it be marked Complainant's Exhibit No. 659."

CURIOUS VARIANCE OF MEMORANDA ON FRENCH POEM.

Carter offered, on Jan. 16, 1905, typewritten statement of his account purporting to set forth the transactions between Westcott and himself, Defendant's Exhibit 96, which pur-

ports to give an exact copy of the lead pencil memorandum on back of the French poem.

This statement of the account was prepared by Carter and Mr. MacPherson, his expert accountant, late in 1904 or early in 1905. MacPherson's testimony (Wyman Vol. 4), p. 22.

The remarkable fact appears that the wording of what purports to be a copy of the memorandum as set forth in the typewritten statement of account, Exhibit 96-A, is not the wording of the memorandum as it appears on the French poem.

The Memorandum as Set Out in the Statement.

"	2/11/93
16,500	Sweet M's
350	
16,850	N. Y.
1,000	Sav Bk"

The Memorandum as It Actually Is on the Poem.

"	2/11/93
16,500	=m
350	=Bal Daddy
16,850	N. Y. Deps.
1,000	=Sav Bk"

From which it would appear that Carter had another draft of this memorandum from which he made up his statement, and that he did not get it copied on the French poem just as he drafted it, but overlooked the fact when he made up his statement of account. Carter tried to remedy this oversight when he had the typewritten statement 96-A printed, but the Government objected to his changing the paper itself (Wyman Vol. 4), p. 153.

Carter tries to explain this by saying that after he found the poem in Box B-31, he wrote out the memorandum on it from memory, and that he got it wrong, and that it was from this memory draft he had made up his statement (Wyman Vol. 2), p. 156.

But why should he, in a matter so vital to his case as he makes it, not have copied it correctly? He had access to the papers right straight along and looked at the poem a number of times prior to putting in his account (*ante*, p. 591).

He must have supposed he had his office copy exactly like the memorandum, and he would never have relied upon a memory draft if he made one as he now claims.

The reasonable conclusion is that his alleged memory draft was the original, but that he changed the wording when he transferred it to the poem, but failed to change the original draft to correspond.

Defendant's Exhibit 51.

Carter produced before the Examiner from his own possession on Jan. 16, 1905, a small white sheet of paper pinned to some clippings from a newspaper and from a magazine at the bottom of the magazine leaf was written in ink the words:

"This exquisite little figure from sweet M."

On one side of the white sheet was written in ink:

"From the Troy Daily Times, April 11, 93"

On the other side of the white sheet was written:

"Memo.

Daddy will get bonds he likes for me will be better than those I have. He gives these for M's sake."

Carter claims these papers were returned to him by General Barr at the Court Martial.

Offered in evidence (Wyman Vol. 2), p. 45.

Objected to by Government (Wyman Vol. 2), p. 46.

Defendant's Exhibit 52. Vol 14 P 6538-40

Carter produced before the Examiner from his own possession on Jan. 16, 1905, a small pocket memorandum book about 2-1/4 by 1-3/4 by 1/8 inches in dimension, which he claims was returned to him by General Barr at the Court Martial trial. The book had attached to it only two fly-leaves in it, but there was a third loose leaf, the balance of the leaves were torn out and gone.

There were several pencil entries on the leaves in Carter's handwriting introduced to bolster up his testimony as to certain bonds and coupons, etc. Vol 12 P 3381

Offered in evidence (Wyman Vol. 2), p. 42.

Objected to by Government (Wyman Vol. 2), p. 43. Vol 12 P.

Defendant's Exhibit 53 Vol 14 P 6540

Carter produced before the Examiner from his own possession Jan. 16, 1905, a sheet of paper on which there are certain pencil memoranda in his own handwriting one of which relates to getting a bath-tub, the other dated 6/8/93 relating to cashing a check for "Daddy" and paying him $350 for his July coupons, with certain other cabalistic figures, all intended to bolster up his testimony as to certain transactions with R. F. Westcott. Vol 12 P 3393

Offered in evidence (Wyman Vol. 2), p. 47.

Objected to by Government (Wyman Vol. 2), p. 48. Vol 12 P.

Defendant's Exhibit 56. Vol 14 P 6542

Carter produced before the Examiner from his own possession on Jan. 16, 1905, a poem entitled,

"Little Mag"

on which was written in pencil in his own handwriting a memorandum purporting to be dated "Aug. /93" relating to an alleged order from Westcott to buy 10 D. & H. bonds and "to keep the bal myself."

Carter says these papers were returned to him by General Barr at the Court Martial trial. Vol 12 P 3399

Offered in evidence (Wyman Vol. 2), p. 53.

Objected to by Government (Wyman Vol. 2), p. 54. Vol 12 P 3

Defendant's Exhibit 59. Vol 14 P 6545

Carter produced before the Examiner from his own possession on Jan. 17, 1905, a health certificate dated

Jan. 27, 1893, on which is written in pencil in his own handwriting:

"10/14/93

Pd. Daddy bal due $200."

He says this was returned to him by General Barr at the Court Martial trial.

Offered in evidence (Wyman Vol. 2), p. 56.

Objected to by Government (Wyman Vol. 2), p. 56.

Defendant's Exhibit 60.

Carter produced before the Examiner from his own possession on January 17, 1905, a certificate from a Notary Public dated Savannah, Oct. 24, 1893, stating that Carter was at the Engineers' Office on that date. On this there is a pencil memorandum in Carter's own handwriting offered to bolster up the account he has made up as to certain cash and coupon items.

Carter says these papers were returned to him by General Barr at the Court Martial trial.

Offered in evidence (Wyman Vol. 2), p. 57.

Objected to by Government (Wyman Vol. 2), p. 58.

Defendant's Exhibit 64.

Carter produced before the Examiner from his own possession on Jan. 17, 1905, a letter from Sally Nelson Robins, dated Richmond, Va. July 26, 1894, to Carter, asking him to join the Virginia Historical Society, on which is written in Carter's own handwriting certain pencil memoranda under date of October 10, 1894, purporting to set out certain financial transactions between Carter and "Daddy" which is offered to bolster up the account which Carter now has made up.

Carter says these were returned to him by General Barr at the Court Martial trial.

Offered in evidence (Wyman Vol. 2), p. 61.

Objected to by Government (Wyman Vol. 2), p. 61.

Defendant's Exhibit 65.

Carter produced before the Examiner from his own custody on Jan. 17, 1905, an Insurance policy on the 8th avenue New York property, which policy is dated April 19, 1894, on the back of which there is a pencil memorandum in Carter's own handwriting which reads:

"Daddy gave me $5 for Outerbridge."

Vol 12 P5410

Carter says (Wyman Vol. 2), p. 64, that he put the memorandum there in January, 1895. He does not claim this paper was ever in the possession of the Government.

Vol 12 P5410

Offered in evidence (Wyman ~~Vol. 2), p. 64.~~

Objected to by Government (Wyman Vol. 2), p. 65. Vol 12 C

Defendant's Exhibit 73-A. B. C. Vol 12 P5414 5416-5417

Carter produced before the Examiner from his own possession on Jan. 17, 1905, a pocket memorandum book which he says was returned to him by General Barr at the Court Martial trial, in which there are certain memoranda in his own handwriting, among others:

P5414 From page 39, "July 26, 1892, Get Huey bill."

P5416 From page 73, "Safe Dep. box 109 Gar. S D Co 2 Aug 8, 1893"

P5417 From page 63, "April 9. 95 N. Y. Pd $100 fr Daddy. Transacted his bus. with R & F"

Offered in evidence (Wyman Vol. 2), p. 68. Vol 12 P5414

Objected to by Government (Wyman Vol. 2), p. 69. Vol 12 C

Defendant's Exhibit 80. Vol 14 P6559-60

Carter produced before the Examiner from his own possession on Jan. 17, 1905, a tax assessment sheet, and receipt to R. F. Westcott, dated Nov. 24, 1896, for $9.95, which he says was returned to him by General Barr at the Court Martial trial, on which is written in lead pencil in Carter's own handwriting the following:

X-mas 96		
Allow	18	
Pd to date	17610.69	
	389.31	
Overpaid 95	294.33	(12294.33)
Pd cash today	94.98	

Daddy allow same next year."

Carter offers this to corroborate his statement that Westcott had allowed him to use of his money, $18,000 in 1896, and would allow him the same amount in 1897.

P5418 Offered in evidence (Wyman Vol. 2), p. 72.

5419 Objected to by Government (Wyman Vol. 2), p. 73.

General Barr Never Saw Any of the Memoranda.

General Barr testified that he examined all the papers turned over to Carter or his counsel at the Court Martial that he was on the lookout for just such evidence bearing on Carter's finances, and that he saw nothing of the kind in any of the papers returned. He was examined in detail as to these papers. See his testimony (Wyman Vol. 9), pp. 4578 to 4602.

DIVISION NO. 3 (FEBRUARY 10, 1893), EXHIBIT 319. Vol. 3c

Deposit of Disbursing Checks.

Exhibit 243. Vol 31

John F. Gaynor's credits for deposits in the American Exchange National Bank, show the deposit on Feb. 10, 1893, of certain of Carter's disbursing checks on the Assistant Treasurer, New York, and on the Merchants National Bank of Savannah.

He also deposited on the same day in the same account his own check on the Savannah Bank and Trust Co. as shown by Exhibit 199 and 243, by which $5,261.46 was transferred from the local bank in which money was kept for carrying on the work to Gaynor's account in New York.

Checks Deposited.

Deposited Feb. 10, 1893, Carter's Disbursing Check No. 200,322	$37,722.83
Deposited Feb. 10, 1893, Carter's Disbursing Check No. 53,081	5,000.00
Deposited Feb. 10, 1893, Carter's Disbursing Check No. 53,082	15.71
Deposited Feb. 10, 1893, Gaynor's Check Sav. Bank and Trust Co.	5,261.46
Total deposit to credit J. F. Gaynor	$48,000.00
One-third of which is	16,000.00

Carter's Deposits to His Own Credit.

Feb 10, 1893, with Union Trust Co. N. Y. Exhibit 251, bills . Vol 31	$5,850.00
Feb. 10, 1893, with C. H. Van Deventer, Exhibit 228, currency . Vol. 31	5,000.00
Feb 10, 1893, with Watson & Gibson, Exhibit 646, (credited Feb. 11, 1893, Exh. 233) cash Vol 31	5,000.00
	$15,850.00

Carter admits he was in New York Feb. 10, 1893 (Wyman Vol. 3), p. 1049. Vol 13 5962-3.

Withdrawal by J. F. Gaynor from American Exchange National Bank.

Feb. 10, 1893, favor of unknown $16,000.00
For B. D. Greene's one-third see Division 4 (*post*, p. 606).

INVESTMENTS, DIVISION 3.

Mr. Johnson has entered opposite the deposits made by Carter with the brokers the purchases of securities made, to-wit:

All in Carter's Name.

Feb. 11, 1893, by Watson & Gibson, 5 M Ches. & O. bonds	$5275.00
Feb. 11, 1893, by Watson & Gibson, 5 M Erie 2nd bonds	5231.25
Feb. 13, 1893, by C. H. VanDeventer, 5 M Wabash D. & Chi.	5031.25
Feb. 13, 1893, by C. H. VanDeventer, 5 M Chi. & E. Ill.	5118.75
(Exhibits 228 & 233). Cost:	$20656.25

Vol. 31

The balance of cost in excess of the currency deposits made by Carter as aforesaid, being paid by Carter's individual checks on the Union Trust Co. as shown by Exhibits 228 and 233. Vol 31. The funds in that bank having come from balance of the trust fund deposited in Division 1 & 2 not previously invested

COLLECTION OF COUPONS.

Carter deposited the coupons from the above bonds in his individual account in the Union Trust Co., New York, as shown by Exhibit 251, as follows: Vol 31

From the 5 C. & O.—May 2, 1893; May 13, 1896; Nov. 21, '96; May 10/97

From the 5 Wabash D. & Chi., May 2, 1893; Aug. 6, 1894, Jan. 3, 1896; July 20, 1896.

From the 5 Chi. & Eastern Illinois—May 2, 1893, May 13, 1896, Nov. 21, 1896.

P. 602. Note

*Statement of Carter's account with the trust fund deposited with Union Trust Co.:

Balance of trust fund uninvested on deposit in Union Trust Co. at end of Division 2 (*ante*, p. 567)		$5,503.31
Feb. 10, 1893. Currency deposit U. T. Co. (*ante*, p. 601)		5,850.
		$11,353.31
Withdrawn		
Feb. 3, 1893. Check Carter to Van Deventer	$5,150.	

Coupons from same bonds were deposited in 1895 in the R. F. Westcott, O. M. Carter, Attorney, account in the Union Trust Co. while Westcott was in Europe, but Carter drew the money out and spent it, as will be shown later. Exh. 589 Vol. 29

Final Disposition of Securities.

The 5 C. & O. bonds, and
5 Wabash D. & Chi. bonds,
are in the receipt given by Carter to R. F. Westcott on Oct. 29, 1897.

Exhibit 272 (Shields Vol. 2), p. 873. Vol. 34 P. 11275

The C. & O. bonds, the proceeds of the Wabash D. & Chi. bonds, are now in the hands of the Receiver in the auxiliary suit in West Virginia, and are claimed by Carter.

The 5 Chi. & E. Ill. bonds were sold June 25, 1897, by R. F. Westcott through Reed & Flagg for $4993.75, Exhibit 239, and the proceeds applied to Carter's investment in the Orange, N. J., property. Vol. 31 See Post p. 787

*

CARTER'S PRESENT CONTENTION.

Carter's present contention is that the $15,850 currency deposits made by him on Feb. 10, 1893, was part of the alleged $36,600 which he says was found in currency in the safety deposit box in the Garfield National Bank on Dec. 29, 1892, and taken possession of at that time, and returned in part to him Feb. 10, 1893 (Wyman Vol. 3), p. 1057, but of which fact he offers no proof except his own testimony and the memorandum entries in his own handwriting in his diaries and on letters produced by him first time in January, 1905 (*ante*, pp. 581-2). Vol. 13 p. 3467

He therefore now claims the purchases made Feb. 11 and 13, 1893, above, as what he calls his wife's estate (Wyman Vol. 3), pp. 1630, 1631-1633. Vol. 14 p. 4338-40, 4342

P. 603. Note

*The 5 Erie 2nds, together with the other 5 bought (*ante*, p. 567), were sold April 19, 1893, by R. F. Westcott through Van Deventer for $9,637.50 and proceeds reinvested in other securities which were turned over to Carter. (*Post*, p. 614.)

POOR COPY

Carter took out letters of administration in New York on Jan. 3, 1893 (*ante*, p. 584). He says he took out those letters to get the money to the credit of his wife's estate in the Garfield National Bank (Wyman Vol. 3), p. 1057.

The amount to her credit there when she died was only $385.81 (Exhibit 594 Wyman). Carter got that balance Jan. 16, 1893. Exhibits 606 and 607 (Wyman), and 367 (Court Martial).

Carter testified under cross-examination (Wyman Vol. 3), p. 1057:

> "Q. You made no return, and never did make any return of this alleged $50,000 from your wife's estate, from which you claim the $16,500 comes?
>
> A. No, sir; Mr. Westcott had taken that prior to that date, saying he had given it to my wife and that *it was his*, and that eventually he would give me some other sums.
>
> Q. Prior to that date?
>
> A. Prior to Jan. 3, 1893, it was on Dec. 29, 1892, saying *it was not hers* but his.
>
> Q. When he gave it back to you, as you claim, he gave it back to you February 10, 1893, you say $16,500, you never made any return of that then?
>
> A. No, he gave it to me as a gift *from him* then, on account of my wife, being in equivalent the total of what she had left.".

We will consider Carter's present contention that the securities purchased in this division came from his wife's estates, and were treated as such in the dealings between Westcott and Carter, from the date of their purchase, in repeated settlements between them, a little later on when we consider his contradictory testimony before the Board of Inquiry and Court Martial (see *post*, p. 630. 1632 et seq.)

DIVISION 4 (MARCH 13, 1893), EXHIBIT 319 Vol 30

The following deposits were made to John F. Gaynor's credit in the American Exchange National Bank of New York, March 13, 1893, per Exhibit 243 (Shields). Vol. 31

Checks Deposited.

Deposit March 13 Carter's Disbursing check No. 224,375 . . Dated Mch. 6-93	$34,985.47
Deposit March 13 Carter's Disbursing check No. 53,122 . . . Dated Mch. 6.93	10,000.00
Deposit March 13 Carter's Disbursing check No. 224,376 . Dated Mch. 7-93	2,819.64
Deposit March 13 Gaynor's check Sav. Bank & Trust Co.	194.89
To deposit to credit of J. F. Gaynor	$48,000.00
One-third of which is	$16,000.00

Carter's Deposit to His Own Credit.

Deposit March 14, 1893, with Union Trust Co. Exhibit 251 . Vol. 31 Bills $7,000.00

Carter admits he was in New York Mch. 13 & 14th, 1893 (Wyman Vol. 3), p. 1060. Vol 3 2969

Safety Deposit Box Rented.

On March 16, 1893, Carter rented a safety deposit box in his own name in Mercantile Safe Deposit Company, New York. Exhibit 423 (Stevens) Vol. 28

P. 605. Note

*Deposits of currency by Carter in Savannah, as shown by P. Exhibits 32, Vol. 31, and Def. Exh. 50, Vol. 12, p. 5449, and Df. Exhibit 49, Vol. 14, p. 6537 and Vol. 12, p. 5503:

Mch 4, 1893.	Currency in Mer. N. Bk Savannah	$650.
Mch 6, 1893.	Currency in Mer. N. Bk. Savannah	565.
Mch 5, 1893.	Currency in Mer. N. Bk. Savannah	327.14
Mch 7, 1893.	Exchange deposited in U. T. Co., N. Y., purchased with currency in Savannah	500.
		$2,042.14

Carter accounts for the source of the $7,000 currency deposited by him on Mch. 14, 1893, by a gift of $7,500 from Westcott after a Grand Central depot visit supported by a diary entry (Vol. 12, p. 5508), and by the testimony of I. Stanton Carter before the Court Martial, that Carter gave him $500 on that day. But Carter's diary entry as offered in this case is shown to have been different from what it was before the Court Martial. (*Ante*, p. 569–570.) I. Stanton Carter is shown to have committed perjury in this case. (Vol. 10, p. 5051–2; and see Vol. 1, pp. 328 to 331.) See refutation of Grand Central depot story by Rossiter. (*Post*, 807–812.)

The following checks are shown to have been paid on the following dates in the accounts of J. F. Gaynor, with the American Exchange National Bank, New York. Exhibit 245 Vol 3

Drawer.	Paid.	Whose favor.	Amount.
J. F. Gaynor	March 6, 1893.	Favor of unknown.	$6,500.00
* J. F. Gaynor	March 7, 1893.	Favor of unknown.	2,500.00
J. F. Gaynor	March 13, 1893.	Favor of unknown.	7,000.00
		Total Favor of unknown.	$16,000.00
J. F. Gaynor	March 13, 1893.	Deposit (Exch. 241) Vol. 31 B. D. Greene	32,000.00

It will be noted that there was no check shown in Division No. 3, Feb. 10, 1893, from J. F. Gaynor to B. D. Greene for the Greene $16,000, the third of the $48,000 then divided. But we see that when this other $48,000 is divided March 13, 1893, Greene not only gets a third, $16,000, but also an additional $16,000, making up for his third of the preceding division.

INVESTMENTS IN CARTER'S NAME.

Savannah Towboat Co. stock, bought through H. M. C. Smith, Savannah, and paid for by Carter's checks on Merchants National Bank of Savannah, Ga., and Union Trust Co. N.Y. as follows:

March 6, 1893, Exhibits 252 & 62 Vol. 31	$ 250.00
March 6, 1893, Exhibits 52 Vol 31	1200.00
March 9, 1893, Exhibits 52 Vol. 31	350.00
March 9, 1893, Exhibits 252 & 62 Vol 31	400.00

Loan by Carter to VanDeventer.

March 15, 1893, Exhibits 252, 228, 62, 230	5000.00
	$7200.00

P. 606. Note.

*The complainant contends that the circumstances show that this $2,500 check of Gaynor's was cashed in Savannah on Mch. 4, 1893, and reached New York in due course and was charged to Gaynor's account in the Amer. Exch. Nat. Bank on Mch. 7, 1893, and that the proceeds of this check cashed in Savannah was the source of the $2,042.14 currency deposited in Savannah from Mch. 4 to 9th. (*Ante*, p. 606.)

Carter testified that the $650 and $500 items of this currency deposited in Savannah came from an alleged gift of $16,850 of currency made by Westcott to him Feby. 10, 1893, on the date of the previous Greene & Gaynor Division and he does not know where the balance came from. (Vol. 12, p. 5500.)

Statement of Carter's receipt and investment of trust funds deposited in Division 4.

RECEIPTS.

Mch. 4 to 9th, 1893. Currency at Savannah (*ante*, p. 605)	$2,042.14
Mch. 14, 1893. Currency deposit Union Trust Co., N. Y. (*ante*, p. 605)	7,000.
	$9,042.14

INVESTMENT FROM ABOVE.

Tow boat stock—25 shares in Certificate 217 of Feby. 20, 1893, paid for by Carter's checks as follows:

Mch. 6, 1893. On Mer. Nat. Bk. Savannah (Exh. 52, Vol. 31)	$1,200.
Mch. 9, 1893. On Mer. Nat. Bk. Savannah (Exh. 52, Vol. 31)	350.
Mch. 6, 1893. On Union T. Co., N. Y. (Exhs. 62 and 252, Vol. 31)	250.
Mch. 9, 1893. On Union T. Co., N. Y. (Exhs. 62 and 252, Vol. 31)	400.
	$2,200.

Loan to Van Deventer, per Exhibits 252, 228, 62, 230 in Vol. 31 by Carter to Van Deventer:

Mch. 15, '93. Loan (see *post*, p. 613)	$5,000.
	$7,200.

Account of Carter with the trust fund on Deposit with Union Trust Co.:

Balance of trust fund on deposit from Division 3 (*ante*, p. 602)		$ 697.06
Mch. 7, 1893. Deposit in Union T. Co., N. Y., of exchange which had been purchased in Savannah with currency on Mch. 4, 1893 (*post*, p. 609),		$500.
Mch. 14, 1893. Currency deposit in Union T. Co., N. Y., to Carter's credit (*ante*, p. 605)		7,000.
		$8,197.06
Withdrawals from U. T. Co. as above:		
Mch. 6, 1893. Check for tow boat stock	$250.	
Mch. 9, 1893. Check for tow boat stock	400.	
Mch. 15, 1893. Check loan to Van Deventer	5,000.	5,650.00
Balance in Union Trust Co. N. Y., uninvested to end of Div. 4.		$2,547.06

The Defendants have criticised the inferences which the Government draws from the above facts:

(1) Because we do not show that Carter deposited his exact third immediately.

Reply.

But we do show that he deposited $7,000 in currency on the same day that Gaynor's check for $7,000 in favor of unknown is paid. And the other two checks of Gaynor for $2,500 and $6,500 just make $16,000, the one-third of the total amount divided.

And we do show that Carter rented a safety deposit box immediately following.

And we do show that Carter later brings out from some source currency and deposits it in to his credit.

This division as well as the divisions both before and after this one through a series of years, demonstate that a division by thirds was being made between B. D. Greene, J. F. Gaynor and somebody, who we insist was Carter. When the ratio in which the divisions were being made right straight along is established, and it is shown that Carter deposited a lesser amount than his exact third in his account at this particular time, but rented a safety deposit box, the inference that he put the balance of his $16,000 in his box, or used it otherwise, is called for by the circumstances.

(2) The Defendant contends that it was impossible that the money to pay for the Towboat stock, paid for by Carter on checks dated March 6, 1893, on the Merchants National Bank of Savannah, Ga., could have come from the proceeds of the J. F. Gaynor checks for $6,500 or $2,500, which are shown to have been charged to J. F. Gaynor's account in the American Exchange National Bank on March 6 and 7th, 1893.

P. 607. Note

*The defendant also contends that it was impossible for the checks of John F. Gaynor charged to his account in N. Y. on Mch. 6th and 7th, 1893, for $6,500 and $2,500 (*ante*, p. 606) even if their proceeds went to Carter, to have been any part of the division of the proceeds of the disbursing checks aggregating $48,000, which were not deposited to Gaynor's credit until Mch. 13, 1893. (*Ante*, p. 606.)

But the monthly accounts of the contractors was completed Mch. 1, 1893, and Carter's disbursing checks were dated Mch. 6th and 7th, 1893. Gaynor had a large bank balance of his own in N. Y. and there is no reason why he should not have anticipated for Carter's accommodation the money Carter needed to pay for his stock, and then pay Carter the balance of $7,000, as he is shown to have done of Mch. 13, 1893.

[illegible] simply an exchange of funds.

But the bank account of J. F. Gaynor does not give the date of the $2,500 which was charged to Gaynor's account in New York on March 7, 1893.

Checks drawn on New York which were cashed in the local banks at Savannah, usually took about three days to reach the banks in New York on which they were drawn, and to be there charged up against the drawer.

For instance, Carter's disbursing check No. 269,397 in favor of the Atlantic Contracting Co., dated January 11, 1895, for $9,368.67 in evidence, shows by the endorsements on it, that it was cashed at the Merchants National Bank of Savannah, Ga., and transmitted to the National Union Bank, New York, and stamped paid by the Sub-Treasury, New York, January 14, 1895.

Take also the J. F. Gaynor check for $194.89, drawn on the Savannah Bank and Trust Co., which is one of the checks referred to in this Division as deposited to Gaynor's credit in the American Exchange National Bank on March 13, 1893. This check reached Savannah and was charged up to J. F. Gaynor by the Savannah Bank & Trust Co., on March 16, 1893, per Exhibit 199, Shields. Vol. 31

If J. F. Gaynor's check for $2,500 which was charged to his account in New York on March 7, 1893, was cashed in Savannah we would have a right to conclude that it was cashed there about March 4, 1893.

Deposit by Carter March 4, 1893.

Referring now to Carter's personal check stub-book on the Merchants National Bank of Savannah, from Box B-31, Exhibit 52 (Shields) and Defendant's Exhibit ~~45 and 50~~ (Wyman), it shows deposits in that bank by Carter as follows:

March 4, 1893, currency $650.00
March 6, 1893, currency 565.00
March 9, 1893, currency 327.14

$1,542.14

It further appears that Carter on March 4, 1893, bought New York Exchange with currency, from the Southern Bank of the State of Georgia (See Defendant's Exhibit 49 Wyman) and deposited the exchange in his account in the Union Trust Co. March 7, 1893. Carter's testimony (Wyman Vol. 2), p. 157 ..... $500.00

$2,042.14

We see, therefore, that there is no difficulty whatever in the checks aggregating $1,550 drawn by Carter on the Merchants National Bank of Savannah on March 6 and 9th, having been derived from the proceeds of the J. F. Gaynor check paid in New York on March 7, 1893.

It also appears that the $500 exchange which Carter deposited in the Union Trust Co., New York, on March 7th, got there before his check for $250, drawn on that bank March 6, 1893, was paid, the latter being entered in Carter's account as paid March 11, 1893. Exhibit 252.

It is true that Carter testified before the Examiner (Wyman Vol. 2), p. 157, that the above currency deposits made by him in Savannah, were part of the funds given him by Mr. R. F. Westcott, but he produces nothing to corroborate his statement except his own memoranda on letters and diary entries (*ante*, p. 563 *et seq*).

(3) It is suggested by defendant's expert accountant, Mr. McPherson, that the account of R. F. Westcott with C. H. Van Deventer, Exhibit 435 (Parsons), shows the following deposit to Westcott's credit:

March 30, 1892, currency $9,000.00

And he calls attention to the fact that if this be added to the $7,000 currency deposited by Carter to his own credit

March 14, 1893, it would make just $16,000, the amount of the one-third of the Greene & Gaynor of March 13, 1893.

And (Wyman Vol. 4), p. 1211, he says that the Government has not shown the source from which Westcott got his $9,000 currency deposit made by him on March 30, 1893.

Reply.

But the testimony of H. De Witt Dobbs (Wyman Vol. 9), p. 4571-2, shows that the $9,000 was paid over to Mr. R. F. Westcott in cash by Mr. Dates and Mr. Dinkwater.

On March 30, 1893, for a sale of real estate made by Mr. Westcott, situate at Orange, N. J.

(4) It was also suggested by the defendant's expert accountant (Wyman Vol. 4), p. 1210, that the source of the following deposits in Westcott's account in the Union Trust Company are not accounted for by the Government, to wit:

Feb. 9, 1893, check deposited	$15,000
Feb. 18, 1893, check deposited	1,000
Mch. 1, 1893, check deposited	11,500
Mch. 30, 1893, check deposited	5,000

Reply.

It will be observed, however, in the first place that these are not *currency* deposits, and that the Government has shown in rebuttal the source of these deposits, to wit (Wyman Vol. 9), p. 4573:

Feb. 9, 1893, check from W. H. Belcher for sale by Westcott of a piece of property in Orange, N. J. ... $15,000

(Wyman Vol. 9), p. 4574:

Feb. 18, 1893, check from R. P. McDougal for sale by Westcott of property at Orange, N. J. ... 1,000

Mch. 1, 1893, check from same to same for same purchase ... 11,500

(Wyman Vol. 9) p. 4573:

Mch. 30, 1893, check Dobbs & Davis, Orange, N. J., property sale ... 5,000

None of these deposits therefore had anything to do with the Greene & Gaynor transactions.

DIVISION NO. 5 (APRIL 14th, 1893), EXHIBIT 319. Vol 30

Carter's Disbursing Checks Deposited.

Deposited April 14, 1893, to credit of *J. F. Gaynor*, in American Exchange National Bank, New York, per Exhibit 243, four of Carter's disbursing checks aggregating $62,154.34
One-third of which is 20,718.11

Vol 37

Carter admits he was in New York April 14 and 15th, 1893. (Wyman Vol. 3) p. 1072.

Vol 3 p 2477

Makes False Report.

He admits that in his official report to the Chief of Engineers he failed to report his absence from his station from April 12 to April 18, 1893, but did report his absence from April 18th to April 21, 1893. (Wyman Vol. 3) p. 1065. See copy of his official report (Wyman Vol. 3), p. 1068.

Vol 3 p 2411-3

Vol 12 p 2574

See Carter's alleged excuse (*ante*, p. 563 *et seq*).

Contemporaneous Deposits Which Went to Carter.

Deposit April 14, 1893, credit O. M. Carter in Union Trust Co. Exhibit 251, bills ..... $ 400.00

Vol 31

Deposit April 14, 1893, credit R. F. Westcott, in Union Trust Co., Exhibit 256, bills 14,500.00

Vol 31

Deposit April 15, 1893, credit O. M. Carter, in Union Trust Co., Exhibit 251, bills 3,000.00

Vol 31

$17,900.00

On the same day, April 14, 1893, that the above currency deposit of $14,500 was made in R. F. Westcott's account, a check of R. F. Westcott on the Union Trust Co. for $14,742.64

was deposited to Carter's credit with C. H. VanDeventer. Exhibits 228, 255, 231. Vol 31 and Vol 23 P 11040

Carter visited his safety deposit box in the Garfield National Bank on April 14, 1893. Exhibit 424 (Parsons). Vol 2

Carter visited his safety deposit box in Mercantile Safe Deposit Co. on April 15, 1893. Exhibit 423 (Parsons). Vol 2

Certain Withdrawals by J. F. Gaynor and B.

The following checks of J. F. Gaynor and B. D. Greene were paid by the American Exchange National Bank on the following dates as shown by Exhibits 245, 241, 242: Vol 31

Gaynor	April 14, 1893, favor of unknown	$8,450.00
Greene	April 14, 1893, favor of B. D. Greene	6,550.00
Gaynor	April 15, 1893, favor of unknown	3,137.23
"	April 18, 1893, favor of unknown	2,000.00
"	April 18, 1893, favor of unknown	295.00
"	April 20, 1893, favor of unknown	100.00
"	April 20, 1893, favor of unknown	4,200.00
"	April 14, 1893, deposit B. D. Greene a/c	27,387.23

No combination of these checks make the exact amount of one-third, but the cash deposited in Carter's and Westcott's account could have come out of the cash proceeds of several different combinations of them.

POOR COPY

Through VanDeventer, Exhibit 228. Vol 31

April 11, 1893, 5 Chi., St. P., M. & Om. bonds.....$ 6,143.75
April 14, 1893, 10 Chi. & N. W. cons. bonds 13,612.50

$19,756.25

Paid for:

April 14, 1893, Credit by VanDeventer for loan made him by Carter's check of March 15, 1893, on Union Trust Co. (See Division 4), as per Exhibit 228, Vol 31

Loan $5,000.00
Interest on same 13.61 $5,013.61

April 14, 1893, R. F. Westcott's check on Union Trust Co. Vol 23 p. 11040 .....14,742.64

$19,756.25

It will be noted that:

Apr. 14, 1893, Westcott's check deposited to Carter's credit . Cash 2118 Vol 31 .....$14,742.64

Apr. 14, 1893, Currency deposited to Westcott's account . . . . . Cash 256 Vol 31 ..... 14,500.00

Difference . . ..$ 242.64

But R. F. Westcott had collected the coupons falling due in March, 1893, on 10 Erie 2nd bonds bought by Carter in Divisions 2 and 3, see (*ante* pp, 567 and 602) ..... Vol 30 p. 12358 $250.00

Carter admits this. Defendant's Exhibit 96-A, p. 10.

Even this $7.36 balance of Carter's money in Westcott's hands was adjusted between Westcott and Carter as we shall see later. Post. p. 615-616.

P. 613. Note

*These securities were delivered by Van Deventer to Carter on Apr. 14, 1893. (Exh. 228 (Shields), Vol. 31.) On same date Carter visited his safety deposit box in Garfield Safe Deposit Co. (Ex. 424 (Parsons), Vol. 28.)

These securities were ordered purchased by letters of Carter to Van Deventer Apr. 8th and 11th, 1893, from Savannah. (Vol. 11, p. 5236.)

Now, Carter explains Westcott's deposit of $14,500 of currency on Apr. 14, 1893, from which the transfer was made to pay Van Deventer for these securities, by a Grand Central depot visit in which Carter went along at Mr. Westcott's request as a bodyguard. (Vol. 12, pp. 5512–13.) From the fact that Carter ordered the bonds on Apr. 8th and 11th, he must have anticipated these Grand Central depot visits. But Carter issued the Greene & Gaynor disbursing checks Mch. 31st and April 3, 1893, and according to him, he arrived in N. Y. on the 13th in the afternoon (Vol. 19, p. 9074), and the disbursing checks were deposited on 14th.

Sales of Carter's Securities by Westcott.

The following sales were made by R. F. Westcott through C. H. VanDeventer of securities which had been previously bought in Carter's name:

Apr. 18, 1893, Exhibit 232, 5 M Reading bonds (Div. 2) $3,712.50

Apr. 18, 1893, Exhibit 232, 2 M Gen. Elec. bonds (Div. 1) 1,977.50

Apr. 19, 1893, Exhibit 232, 10 M Erie 2nd bonds (Div. 2 & 3) 9,637.50

Apr. 19, 1893, Exhibit 232, 3 M Gen. Elec. bonds (Div. 1) 2,951.25

Apr. 17, 1893, Carter gave R. F. Westcott a check drawn by Carter on Union Trust Co. "to buy bonds" see Carter's stub-book, Exhibit 62 . . . . . 2,000.00

$20,278.75

Purchases by Westcott for Carter.

The following securities were then purchased by R. F. Westcott through C. H. VanDeventer:

Apr. 28, 1893, Exhibit 232, 9 M Morris & Essex bonds $12,273.75

Apr. 28, 1893, Exhibit 232, 5 M Chi., St. P., M. & Om. bonds 6,106.25

May 1, 1893. Exhibit 232, 1 M Morris & Essex bonds 1,366.25

$19,746.25

Securities Delivered to Carter.

These securities bought by Westcott with Carter's money were delivered to Carter immediately after their purchase, this is shown by the fact that Carter deposits the coupons

from them in his own account at the first coupon period after their purchase, and numerous other times.

Vol. 31

Exhibit 251, Carter's account in Union Trust Co., shows he deposited on June 1, 1893, coupons on the 10 Morris and Essex and on the 10 Chi., St. P., M. & Om. (being the 5 purchased by Carter on April 11, 1893, and the 5 purchased by Westcott on April 28, 1893).

Carter testified on cros-examination (Wyman Vol. 3), p. 1629: Vol 14 p. 339

"Q. (By Mr. Erwin). Well, he (Westcott) had the proceeds of those bonds that he sold, which you claim were yours, and you gave them to him to sell and re-invest and he made certain re-investments in the same month?

A. At a later date, yes. Then he figured up how much he had received from me on all matters, and figured up how much he had returned and sent a check to me to balance our accounts.

Q. Sending you a check, you say, for $489.86, that is what you state in Exhibit 96-A under date of May 2, 1893?

A. That is right.

Q. So that these bonds I have mentioned represent the re-investment of the proceeds of those bonds that he had just sold?

A. In connection with his other transactions with me, yes."

THE ADJUSTMENT BETWEEN CARTER & WESTCOTT.

Receipts by Westcott.

March, 1893, Coupons collected on 10 Erie 2nd bonds	$ 250.00
Apr. 14, 1893, Currency deposit Union Trust Co...	14,500.00
Apr. 18, 19 & 20, Proceeds sale of Carter's bonds and Carter's check as above	20,278.75
Total Carried Forward	$35,028.75

Receipts by Westcott brought forward $35,020.75

Disbursements by Westcott.

Apr. 14, 1893, Check of Westcott to Carter's credit with VanDeventer	$14,742.64	
Apr. 28 and May 1, 1893, Cost of new bonds purchased by Westcott and delivered to Carter as above Page 614	19,746.25	
Apr. 3, 1893, Exhibit 558, R. F. Westcott's check stub-book and Exhibit 441, shows that R. F. Westcott issued a check No. 62 March 31, 1893, charged to his account April 3, 1893, for $50 in payment of a set of harness. It also appears (Court Martial Vol. 17), p. 3915, Carter at one time kept a horse with Westcott at Richfield Springs, N. Y.....	50.00	34,538.89
		$ 489.86

May 11, 1893, deposit by O. M. Carter in Union Trust Co. of R. F. Westcott's check on Union Trust Co. dated May 2, 1893, Exhibit 255 and 63.....$ 489.86

It is proper to state that there is no positive evidence that the "harness" check was for account of Carter, other than the fact that that check if charged to Carter, makes the exact balance, $489.86, remitted by Westcott to Carter, May 2, 1893.

The fact that the check for $489.86 is for an odd amount would indicate that it was a settlement check.

It may well be that Carter had agreed to make Westcott a present of the $50 for the "harness" or that it was bought for Carter, or that there was a $50 cash transaction between them which does not appear in the accounts.

P. 616. Note

On Feb. 15, 1892, R. F. Westcott telegraphed Carter from Italy: "Take horse, wagon, harness." (Vol. 14, p. 6512.)

On Feb. 25, 1892, R. F. Westcott wrote Carter from Italy: "Geo. writes me you have the buckboard, &c." (Vol. 14, p. 6513.)

Whether Carter wore out Westcott's harness between Feb., 1892, and April, 1893, and agreed to pay Westcott for the new set purchased by Westcott Apr. 3, 1893, or not is only an inference. But the certainty is that some item of $50 must have been charged to Carter if the $489.86 was a balance check as it apparently was.

*Account of Carter with the trust fund and deposit to his credit in Union Trust Co.:

Balance of trust fund in Union Trust Co., Division 4 (*ante*, p. 606(a)	$2,547.06
Apl. 14, 1893. Deposit, Carter's credit (*ante*, p. 611)	400.00
Apl. 15, 1893. Deposit, Carter's credit (*ante*, p. 611)	3,000.00
	$5,947.06
Withdrawn Apr. 17, 1893. Check to R. F. Westcott to buy bonds (*ante*, p. 614)	2,000.00
Balance trust fund to Carter's credit in Union Trust Co. at end of Division 5	$3,947.06

CARTER MAKES UP A STATEMENT OF ACCOUNT PURPORTING TO STATE HIS FINANCIAL RELATIONS WITH R. F. WESTCOTT.

THE CONQUEST TRANSACTIONS, 1891-1892.

Complainant's Exhibit 588 (Wyman) Defendant's Exhibit 96-B (Wyman).

Charles Conquest married a daughter of R. F. Westcott.

R. F. Westcott made his son-in-law Conquest certain loans.

R. F. Westcott's check stub-book, Exhibit 550 and 553, show the following entries:

No. 21, March 28, 1890, Charles Conquest,.....$20,000.00
No. 74, April 17 1891, Charles Conquest..... 8,000.00

Westcott's bank account, Exhibit 446 (Wyman) shows that checks for corresponding amounts were paid by the bank.

Charles Conquest gave R. F. Westcott his notes for the above loans. (Defendant's Exhibit 15, Wyman.)

Charles Conquest failed to pay the notes, and his firm failed in business just prior to Mr. R. F. Westcott's leaving on a trip to Europe, and Westcott put the collection of these claims in Carter's hands.—Carter's cross-examination (Wyman Vol. 3), p. 1593.

Power of Attorney.

For that purpose Westcott gave Carter a general power of attorney, dated October 21, 1891. Complainant's Exhibit 269-1/2 (Wyman Vol. 1) p. 26 and 276, and (Wyman Vol. 3), p. 1595.

Deposit to Carter's Credit.

R. F. Westcott, also before he left for Europe, placed $5,000 to Carter's credit in the Union Trust Company on October 19, 1891, for Carter's disbursements in the Conquest matter. Exhibit 367 (Court Martial) and Exhibit 588 (Wyman), and Carter's cross-examination (Wyman Vol. 3), p. 1593.

Westcott left for Europe about October 24, 1891, and did not return until about May 12, 1892 (Carter's cross-examination (Wyman Vol. 3), p. 1595.

Carter Proceeds to Sue Conquest.

Complainant's Exhibit 623 (Wyman Vol. 3) p. 1594, is a letter of Carter to Colonel Wm. Garrard, Attorney, Savannah, Ga., dated November 24, 1891, giving a history of the Conquest loan, inclosing Carter's power of attorney from Westcott, and the $8,000 note, and directing attachment suit, etc.

Defendant's Exhibit 15 (Wyman Vol. 3) p. 1889, is a letter from Carter to Huey on the subject of the Conquest matters, dated December 22, 1891, in which he sends to Huey the two original checks for $8,000 and $20,000 which Carter had given Conquest and in which he gives a further history of the Conquest transactions, and in which Carter says:

> "Chas. Conquest has transferred to me all of the assets that I could find." * * * "If there are any legal steps which can be taken to *compel* him to make a statement of what he did with the money and to recover such of it as is possible, I wish them taken at once."

P. 618. Note

*In order to make the Court Martial believe that R. F. Westcott was prodigal with his money and was accustomed to give his sons-in-law large amounts, Carter testified (Vol. 8, p. 4103): "I knew one other son-in-law who ran through nearly $100,000 of Mr. Westcott's inside of a year."

Before the Board Carter stated that it was $70,000 which Conquest had run through with of Westcott's money. (Vol. 14, p. 6586.)

Judge Kohlsaat, in his opinion, seems to have accepted this unsupported statement of Carter as true.

But the accounts of R. F. Westcott are in evidence, and the only amounts which Westcott turned over to his other son-in-law, Conquest, were the two items of $20,000 and $8,000, and these were loans which Carter helped force Conquest to pay, as shown above.

This was done under Mr. Westcott's direction. (Vol. 14, p. 6509, and Vol. 11, p. 5232.)

Statement of Carter's Account in Conquest Matters.
Johnson's Statement.

Mr. E. I. Johnson, has prepared from the original exhibits in evidence a statement of Carter's receipts and expenditures in the Conquest matter (Exhibit 588 Wyman). The debits and credits just balanced to May 13, 1892. Vol 29

Carter's Statement.

Carter's statement, Defendant's Exhibit 96-B, subsequently prepared, has precisely the debit and credit as Johnson's to May 13, 1892. Vol 28

There is no difference therefore between the Government's contention and Carter's as the Conquest account up to Carter's closing check May 13, 1892. Both agree that there was an exact accounting to the cent between Westcott and Carter as to that.

DEFENDANT'S EXHIBIT 96-B, FROM JUNE 8 TO DEC. 13, 1892. Vol 20

Carter's statement, Exhibit 96-B, put in evidence January 17, 1905, of the transactions between R. F. Westcott and himself from June 8th to December 13, 1892, the end of Exhibit 96-B, in so far as he enters the items in the "Dr." or "Cr." column, agree exactly with the statement, Exhibit 590, put in evidence by Mr. Johnson February 5, 1904, with the exception of an item of $8.50 which Carter enters without any date to the entry "Disbursements by O. M. Carter for R. F. Westcott, $8.50." Vol 20 Pg 557

There is no documentary evidence showing this payment of $8.50 by Carter for Westcot's account, but as Carter's check stub-book Sept. 8, 1892, for check to R. F. Westcott, for $345.13 has on it "Return of money advanced for Roanoke," and as the statement of account as made out from the documentary evidence by Mr. Johnson just needs $8.50

to balance it, it is a fair presumption that Carter did pay out in cash $8.50 on that Conquest matter, which he took into consideration before sending the check for $345.13.

We can, therefore, conclude that there is no difference between Mr. Johnson's statement of the account and Carter's statement of the account so far as Carter has entered it on Exhibit 96-B in the "Dr." and "Cr." columns.

Carter has, however, on Exhibit 96-B, a third column which he designates "Gifts to Carter," under this he has entered: Vol. VO P955

1892

June 8 *Bills* deposited by R. F. Westcott in Union Trust Co. to credit of O. M. Carter. Gift to Carter $2,500.00

This was contemporaneous with the cashing of a $2,500 check by Greene in the American Exchange National Bank (*ante*, p. 554).

There is no evidence to sustain the fact of such a gift at that time, except Carter's own statement and alleged memoranda.

Vol. IV P 558-6

Carter testified on his direct examination Wyman Vol. 2, p. 113-114 that Westcott made him a present of this $2,500 to entertain the officers of the Atlantic Squadron at West Point. But on cross-examination (Wyman Vol 3), p. 1038 when confronted with his receipted bills, he admitted he had only spent about $35.55 for expenses at West Point, and that he did not entertain the officers of the squadron.

Carter also has entered in this gift column:

Dec. 13, 1892. A gift deposited to Carter's credit by check of Van Deventer $2,500.00

It is admitted by the Government that this was a gift by R. F. Westcott to Carter immediately after Mrs. Carter's death, under Westcott's promise to pay for furnishing their house. Vol. IV P 1172-5

DEFENDANT'S EXHIBIT 96-A, DEC. 29, '92, TO MAY 2, 1893. Vol. 20

Carter put in evidence on January 16, 1905, a statement Defendant's Exhibit 96-A, to give the transactions between R. F. Westcott and himself from December 29, 1892, to May 2, 1893.

It embraces the period covered by Divisions 2, 3, 4 and 5 of Mr. Johnson's Exhibit 319, and deals with the transactions shown in those divisions by Exhibit 319, and in Mr. Johnson's analysis of the transactions between Westcott and Carter, Exhibit 590. Vol. 29

The essential difference between Mr. Johnson's statement and Carter's, is that these large deposits of cash which Exhibit 319 would indicate, were derived from Greene & Gaynor. Carter supplies as gifts from R. F. Westcott.

Alleged Gifts From R. F. Westcott to O. M. Carter, 96-A. Source of Currency Carter Had To Account For.

Carter had to account for the following currency deposits which went to him from January 1, 1892, to May 2, 1893, as shown in Divisions 2, 3, 4 and 5 of Exhibit 319, to wit: Vol. 28

1893.

Jan. 3, Currency deposited in Carter's account, N. Y. Ante P. 561	$12,900.00
Feb. 10 Currency deposited in Carter's account, N. Y. Ante P. 601	15,850.00
Mar. 14, Currency deposited in Carter's account, N. Y. Ante P. 605	7,000.00
Mar. 4 to 9th, Currency deposited in Carter's account, Savannah. Ante P. 608 9	2,042.14
Apr. 14, Currency deposited in Carter's account, N. Y. Ante P. 11	400.00
Apr 15, Currency deposited in Carter's account, N. Y. Ante P. 611	3,000.00
Apr. 14, Currency deposited in Westcott's account New York, and transferred to Carter's account Ante P. 611 & 613	14,500.00
	$55,692.14

Sources of Currency as Stated By Carter in Exhibit 96-A.

1893.

Jan. 3, Gift of currency Westcott to Carter, being part of money alleged to have come from Carter's wife's estate.	$12,900.00
Jan. 3, Gift of currency, Westcott to Carter	400.00
Feb. 10, Gift of currency, Westcott to Carter, being part of alleged wife's estate	16,500.00
Feb. 10, Gift of currency Westcott to Carter	350.00
Mar. 14, Gift of currency Westcott to Carter, being part of alleged wife's estates from alleged visit to Grand Central Depot	7,500.00
Apr. 14, Gift of currency Westcott to Carter	500.00
Apr. 14, Gift of check, from visit to Grand Central Depot, $15,000; deposited to Carter's credit	14,742.64
Apr. 15, Gift of currency Westcott to Carter, stated to be balance of money of estate of M. W. Carter	2,900.00
	$55,792.64

There were two credit items from Westcott, to wit:

1893.

Apr. 14, Westcott's check deposited to Carter's credit	$14,742.64
May. 2, Westcott's closing check to Carter	489.86
Which added together made even figures	$15,232.50

The problem therefore, was simply to bring in other items which, when added together or subtracted would come out an even fraction of a dollar.

From the above it will be seen that Carter has supplied in his account, as he has prepared it, just a little more than a sufficient number of currency gifts from Westcott during that period to cover the deposits of currency he had to account for at the dates of the Green & Gaynor divisions.

How Carter Reached The $489.86 Balance, May, 2, 1893.

Having entered in his statement of account every item which the documentary evidence referred to in Mr. Johnson's Exhibit 319 and 590 showed was a transaction he could not dispute since he had it in his power to make his cash items of alleged gifts more or less as he found it necessary to bring out the necessary balance of $489.86, it was a comparatively easy matter for Carter to make his memoranda of the alleged gifts accordingly.

There are no less than seventeen different entries in Defendant's Exhibit 96-A, which have no documentary evidence whatever to support them, other than Captain Carter's Diary entries and pencil memoranda in his own handwriting produced in evidence by Captain Carter in January, 1905, for the first time and after he had taken a year to fix his statement of account.

How Carter States The Account

Carter commences by charging Westcott, December 29, 1892, for wife's alleged money taken from the Garfield Safety Deposit box, by Westcott, $36,600, as a set-off to the alleged gifts from Westcott thereafter which he enters in the credit column.

How He Gains A Debit of $112.50.

Carter had bought in his own name 5 M Ches. & Ohio bonds, Aug. 4, 1892. (See Division 1, *ante*, p. 556) for Net	$4,093.75	
Carter sold these bonds in his own name through Van Deventer on Dec. 30, 1892—Jan. 3, 1893, for		3,981.25
It does not appear except by Carter's testimony that Westcott had anything whatever to do with these bonds in December 1892, yet Carter in Exhibit 96-A, charges that he delivered these bonds to Westcott Dec. 29, 1892, at their cost price	$4,093.75	
And then he credits Westcott the next day with the same bonds at the selling price		3,981.25
Which increases Debit by	$ 112.50	

Fictitious Debits, $3,400. Vol-20 Pg552

1892.
Dec. 29, 35 shares Towboat stock.....$ 925.00
15 shares Towboat stock..... 1,425.00
10 shares Towboat stock..... 1,050.00

$3,400.00

Stated by Carter to have been delivered by Carter to Westcott December 29, 1892, as purchased with part of alleged $50,000 wife's estate. Vol-20 Pg553

There is no evidence other than Carter's testimony and pencil memoranda that Carter ever turned over this stock to Westcott. The certificates of stock were never transferred out of Carter's name. Dividends on the stock were paid to Carter May 1, 1893, Exhibit 449, and the Receiver has the stock now.

Carter has entered on his Exhibit 96-C, a credit to Westcott of $3,400 for this same stock as a gift from Westcott June 8, 1893. Vol-20 Pg561

Fictitious Debit, $750. Vol-20 Pg553

1892.
Dec. 29, "R. F. Westcott *agreed* to pay O. M. Carter $750 for Mrs. Carter's casket".....$750.00

(No evidence except Carter's and his Diary and pencil memorandum).

Fictitious Debit, $12.50. Vol-20 Pg553

1893.
Mar. 13, "R. F. Westcott agreed to reimburse O. M. Carter amount paid Watson & Gibson as commission on bond purchases in February,"..$12.50.

That Carter paid a commission of $12.50 to Watson & Gibson on bonds bought by himself February 11, 1893, ap-

peared from Complainant's Exhibit 233, Shields. But there is no evidence that Westcott had anything to do with that purchase or made any agreement with Carter to refund him the $12.50 other than Carter's testimony and Diary entry. Carter needed a $12 50 debit item and got it.

Fictitious Debit, $1,187.50.

As we have heretofore seen (*ante,* p. 614), Westcott sold for Carter on April 18 and 19, 1893, certain bonds which Carter had bought in his own name some time previously, and Westcott reinvested the proceeds in other securities on April 28 and May 1, 1893, which he delivered to Carter.

Carter's bonds sold by Westcott on April 18th and 19th, 1893:

5 M Reading 4's sold for	$ 3,712.50
5 M Erie 2nd, sold for	4,818.75
5 M Erie 2nd, sold for	4,818.75
5 M Gen. Electric, sold for	4,928.75
Total proceeds	$18,278.75

Now instead of charging Westcott in his statement of account, Exhibit 96-A, with the proceeds of these bonds, Carter charges Westcott with the original cost price of the Reading, and Erie bonds which Carter had paid for them, and with the selling price of the General Electric bonds. That is to say, he charges Westcott as follows:

5 M Reading 4's cost price Jan. 1893	$4,218.75
5 M Erie 2nd's cost price Jan. 1893	5,087.50
5 M Erie 2nd's cost price Feb. 1893	5,231.25
5 M General Electric, selling price Apr. 18 & 19	4,928.75
	$19,466.25

By this method of charging up these bonds, Carter added another $1,187.50 to the debit side of the account.

The following bonds Carter *now* claims (Wyman Vol. 3), pp. 1630-1631, he owned May 2, 1893, as purchased from moneys coming from his wife's alleged estate:

Wife's Estate Bonds, May 2, 1893.

5 M Wabash 1st bought Jany. 4, 1893; Nos. 20364 to 20368.

5 M Ches. & Ohio, bought Feb. 11, 1893; Nos. 21025 to 21029.

5 M Wabash, Detroit & Chicago, bought Feb. 13, 1893; Nos. 1621-1736 to 1739.

5 M Chi. & E. Ill., bought Feb. 13. 1893; Nos. 12153 to 12155 and 11302 and 10576.

5 M Chi. St. P. Minn. & Omaha, bought Apr. 11, 1893; Nos. 20242-15926-19282, 16101 and 16672.

5 M Chi. St. P. Minn. & Omaha, bought Apr. 28, 1893; Nos. 2093, 21116 to 21118 and 21123.

10 Morris & Essex, bought Apr. 28 and May 1, 1893; Nos. 2983, 8109 to 8114, 9307 to 9308 and 1495.

Total, 40 M bonds par value $40,000 on hand May 2, 1893.

In his statements of transactions between himself and Westcott, Defendant's Exhibit 96-C, 96-D, etc., he treats these bonds as Carter's wife's estate bonds, and the coupons therefrom as his own, in alleged repeated settlements made between himself and Westcott right straight along for four years, in which settlements from time to time *he makes Westcott recognize Carter's ownership* of the coupons therefrom and account to Carter for proceeds whenever Westcott collected the coupons for Carter. And whenever Carter collected the coupons on them himself, he fails to enter it in his statement of account, Exhibits 96-C, 96-D, etc., of transactions between himself and Westcott (Wyman Vol. 3), p. 1633-4.

The following collections by R. F. Westcott of the coupons

from the above alleged wife's estate bonds are entered on Carter's statement of account, Exhibit 96-C, 96-D, etc., followed by accountings to Carter for the proceeds and repeated balanced settlements between them:

Vol 20

Nov. 1, 1893, Exhibit 96-C, coupons.....	$375.00	P 9563
Dec. 1, 1893, Exhibit 96-C, coupons.....	650.00	9568
Jan. 11, 1894, Exhibit 96-D, coupons....	125.00	9571
Apr. 5, 1894, Exhibit 96-D, coupons.....	375.00	9573
June 1, 1894, Exhibit 96-D, coupons.....	650.00	9574
Oct. 5, 1894, Exhibit 96-D, coupons.....	375.00	9576
Dec. 29, 1894, Exhibit 96-D, coupons.....	650.00	9576
Jan. 7, 1895, Exhibit 96-F, coupons.....	125.00	9577
Jan. 4, 1897, Exhibit 96-F, coupons.....	125.00	9587
May 1, 1897, Exhibit 96-F, coupons.....	250.00	9588

Every one of the above collections by Westcott or deposited in his account as shown by Carter's statements 96-C, etc., were made from some one or other of the above $40,000 wife's alleged estate bonds, and according to these statements were recognized as Carter's by Westcott by repeated accountings to Carter for the proceeds, and by balanced settlements between them. See balances Carter strikes:

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June 8, 1893, Exhibit 96-C, page 14.	P 9562
Oct. 14, 1893, Exhibit 96-C, page 17.	9565
Nov. 15, 1893, Exhibit 96-C, page 20.	9568
Dec. 4, 1893, Exhibit 96-C, page 21.	9569
Dec. 21, 1893, Exhibit 96-C, page 22.	9570
Mar. 6, 1894, Exhibit 96-D, page 24.	9572
Apr. 4, 1894, Exhibit 96-D, page 25.	9573
June 15, 1894, Exhibit 96-D, page 26.	9574
Oct. 5, 1894, Exhibit 96-D, page 28.	9576
Dec. 29, 1894, Exhibit 96-D, page 29.	9577
Jan. 7, 1895, Exhibit 96-D, page 30.	9577
Dec. 31, 1895, Exhibit 96-F, page 33.	9581
Dec. 25, 1896, Exhibit 96-F, page 39.	9587
May 11, 1896, Exhibit 96-E, page 54.	9600 V

P. 629. Note

*To get around the denial of his ownership of these bonds which he had made before the Board and before the Court Martial (*post*, pp. 630–5) Carter testified in the present case that "During the period Jan. 1, '94, to May 10, 1897, I never knew whether these bonds were mine or not, because as I say it depended entirely on Mr. Westcott's feelings." (Vol. 14, p. 6405.) He testified that he could not have constructed the statement of his account with Westcott (Dft. Exh. 96A, B, C, D, etc.), without his diaries (*ante*, p. 575) and that during the Court Martial trial he had forgotten of the fact that his diaries had these entries in them. (*Ante*, p. 574.)

But he admits that he had the diaries in his hands during the Board hear-

CARTER DENIED OWNERSHIP OF THESE BONDS BEFORE THE BOARD AND BEFORE THE COURT MARTIAL.

The Erie 2nds Bonds Purchased by Him December 30, 1892, *January* 3, 1893.

Questioned at the Court Martial about the sale of the 5 M C. & O. bonds bought by Carter August 4, 1892, and about the purchase of the 5 M Erie 2nds for $5,087.50, December 30, 1892, January 3, 1893, in his own name as shown by Van Deventer's account from Box B-31, Carter testified (Court Martial Vol. 19), p. 4410:

"Q. You remember making that purchase?

A. I do not recall it now. I have been to Mr. Van Deventer so often, and know him so well.

Q. That was a purchase of $5,087.50. You saw that, the figures?

A. Of course, I do not carry them in my head.

Q. You saw the figures?

A. I saw the statement, yes, sir.

Q. And do you not recall the purchase?

A. Not at this date, I do not recall it.

Q. Do you remember how long you had had in your possession the $5,000 of the Chesapeake & Ohio 4-1/2 per cents?

A. I don't remember ever having had those Chesapeake & Ohio 4-1/2.

Q. You were given credit for the proceeds of their sale, and there is left due here from you $1,106.25?

A. That may have been some bonds that Mr. Westcott gave me to take to Mr. Van Deventer. Mr. Van Deventer was a friend of his. I had never met him before."

Notwithstanding that Carter testified before the Court Martial that he had never met Van Deventer before this transaction of December 30, 1892, January 3, 1893, Carter now produces a diary entry as follows:

"Jan. 3, 1893. Business down town all day. Got $12,900 from Daddy to give *Charley* and bank."

And he claims now that by "Charley" he meant C. H. Van Deventer.

Again he was questioned about same transaction (Court Martial Vol. 19), p. 4411:

> "Q. That is the only dealings that you ever had with Mr. Van Deventer?
>
> A. I really don't know. I know that Mr. Westcott had been dealing with Mr. Van Deventer for years; he lives right opposite him on 53d Street, and how many times I went down there I don't know. Mr. Van Deventer is out of business now, and I tried to find out from him, but he had no books; and so I don't know whether that is the only purchase I made or not."

Notwithstanding this, we find now that he had a great many transactions with Van Deventer, and his diaries which he claimed he had in his hands at the Board hearing in September, 1897, just preceding the Court Martial, are now full of entries relating to these transactions.

Besides there is a regular correspondence between Carter and Van Deventer in evidence. Exhibit 466 (Wyman). Letter April 8, 1893, Carter to Van Deventer ordering bonds.

Exhibit 467 (Wyman). Letter April 11, 1893, same to same, ordering bonds.

Denied Van Deventer Ever Acted as His Agent.

Carter stated before the Board September 27, 1897 (Board Record Vol. 1), p. 297:

> "Q. Did Mr. C. H. Van Deventer ever act as your agent?
>
> A. As Mr. Westcott's agent.
>
> Q. Did he ever make any deposits for you in The Union Trust Company?
>
> A. I don't remember; he made some purchases for Mr. Westcott, acting as agent for him.
>
> Q. Did he ever receive and deposit money for you?
>
> A. Not unless it was from Mr. Westcott; I don't remember about that."

Again, Carter stated (Board Record Vol. 1), p. 372:

"Q. December 31, 1892, check to the order of C. H. Van Deventer, $1,106.25, 'For balance on Erie bonds.' Was that investment made for Mr. Westcott?

A. That was Mr. Westcott's.

Q. Why did you not transfer that money to him when you transferred the balance on the last check?

A. I don't know why I didn't."

Carter admits he so testified (Wyman Vol. 3), p. 1647.

Carter Denied at Court Martial Trial and on its Review by Attorney-General, Ownership of the Wabash, the C. & O., the Chi. & E. Ill. Bonds.

Questioned about certain coupons shown to have been deposited May 2, 1893, in his personal account in the Union Trust Company (Court Martial Exhibit 368, from Box B-31), Carter testified (Court Martial Vol. 19), p. 4419:

"Q. You are given credit there, collection of 10 coupons Chicago & Northwestern, $175; five coupons Wabash, $125; five coupons of Chesapeake & Ohio, $125; five coupons of Chicago & Eastern Illinois, $125, aggregating $550, between May 2nd and 6th. Did you hold those securities?

A. No, sir, I did not hold those securities.

Q. How did you get the credit of the interest upon them?

A. Because it was put in to my credit.

Q. Did the Union Trust Company hold them for you?

A. No, sir, nobody held them for me. I did not have them.

Q. Did you deposit the coupons?

A. I cannot say whether I depositied them, or whether Mr. Westcott deposited them. I don't know.

Q. Mr. Westcott was in this country May 2nd to 6th, 1893?

A. Yes, I think so.

Q. And he deposited the coupons on securities that he held, with the Trust Company, to be placed to your credit?

A. Some times, and some times he gave them to me and I would put them in. Some times they would go into his account; just depended on how he wanted the money placed.

Q. Some times he deposited to his own credit, and some times to yours?

A. Yes, sir; and some times they would be given into my hands, and I would make them personally."

CARTER'S ANNOTATED ACCOUNT, EXHIBIT 597.

In his annotated statement of his account with the Union Trust Company, Exhibit 597, which Carter furnished the Attorney-General in 1898 (*ante*, p. 532) Carter has written in his own handwriting opposite this deposit in his account of coupons from these Wabash, C. & O. and Chi. & E. Ill. bonds, May 2, 1893, "Securities of R. F. W." *

Carter admits (Wyman Vol. 3), p. 1649, that he did so annotate that entry, and that the securities are those that he is now claiming as his from the date of their purchase prior to May 2, 1893, and which securities he is now claiming in his Exhibit 96-A, B, C, etc., were recognized by Westcott as his by repeated settlements through a period of five years.

Similar deposits in his personal account in the Union Trust Company of coupons from these and other of the 40,000 bonds which he now claims constituted from May 2, 1893, his wife's estate bonds, he annotates on Exhibit 597 as follows:

The Wabash 1st 5's. Annotated by Carter, 1898.

May 2, 1893, Deposit credit of Carter. Coupons 5 Wabash, "Securities of R. F .W."..... $125.00
May 13, 1896. Deposit Credit of Carter, 10 Wabash, "Coupons R. F. Westcott."..... 250.00
Nov. 21, 1896, Deposit credit of Carter, coupons 10 Wabash, "Securities W."..... 250.00

P. 633. Note

*Carter admits that the question as to whether he or R. F. Westcott owned the securities was under investigation by the Attorney General at the time Carter furnished him this annotated account. (Vol. 14, p. 6410.)

The Chesapeake & Ohio. Annotated by Carter, 1898. Vol. 2

May 2, 1893. Deposit credit of Carter, coupons 5 C. & O. "Securities R. F. W." $125.00
May 13, 1896, Deposit credit of Carter, coupons 5 C. & O., "Coupons R. F. W." 125.00
Nov. 21, 1896, Deposit credit of Carter, coupons 5 C. & O., "Securities of W" 125.00
May 10, 1897, Deposit credit of Carter, 5 C. & O. "Securities of R. F. W." 125.00

The Wabash, Detroit & Chicago. Annotated by Carter, 1898. V

July 1, 1893, Deposit credit Carter, coupons 5 Wabash D. & Chi. "Securities R. F. W." ... $125.00
Jan. 3, 1896, Deposit credit Carter, coupons, 5 Wabash, D. & Chi. "Securities R. F. W." .. 125.00
July 20, 1896, Deposit credit Carter, coupons, 5 Wabash, D. & Chi. "Securities R. F. W." .. 125.00

The Chicago & Eastern Illinois. Annotated by Carter, 1898. V

May 2, 1893, Deposit credit of Carter, coupons 5 Chi. & E. Ill. "Securities of R. F. W." $125.00
May 13, 1896, Deposit credit of Carter, coupon 5 Chi. & E. Ill. "Coupons R. F. Westcott" .. 125.00
Nov. 21, 1896, Deposit credit of Carter, coupons 5 Chi. & E. Ill. "Securities of W" 125.00

The Chicago, St. Paul, Minneapolis & Omaha. Annotated by Carter, 1898. Vol 29

June 1, 1893, Deposit credit of Carter, coupons 10 C. St. P. M. & O. "Securities of R. F. W." .. $300.00
July 20, 1896, Deposit credit of Carter, 10 C. St. P. M. & O. "Securities of R. F. W." 300.00
Dec. 1, 1896, Deposit credit of Carter, 10 C. St. P. M. & O. "Securities of W" 300.00
June 1, 1897, Deposit credit of Carter, 10 C. St. P. M. & O. "Securities of W" 300.00

June 1, 1898, Deposit credit of Carter, coupons
10 Morris & Essex, "Securities R. F. W."....$350.00
July 20, 1896, Deposit credit of Carter, coupons
10 Morris & Essex, "Securities R. F. W."..... 350.00
Dec. 1, 1896, Deposit credit of Carter, coupons
10 Morris & Essex, "Securities of W."..... 350.00
June 1, 1897, Deposit credit of Carter, coupons
10 Morris & Essex, "Securities of R. F. W."... 350.00

CARTER DENIED OWNERSHIP BEFORE THE BOARD.

(Board Record Vol. 1) p. 372: Vol 2 P. 1356

The Erie 2nds.

"Q. December 31, 1892. Check to the order of C. H. Van Deventer, $1126.25, 'For balance on Erie bonds,' was that investment made for Mr. Westcott?

A. That was Mr. Westcott's.

Q. Why did you not transfer that money to him when you transferred the balance on the cost check?

A. I don't know why I didn't."

The Wabash, Detroit & Chicago and the Chicago & Eastern Illinois. Vol. 2 P. 1636

"Q. On February 11, 1893, check to the order of C. H. Van Deventer, $5150. 'For bonds,' bonds purchased for yourself, or for Mr. Westcott?

A. For Mr. Westcott."

Morris & Essex.

(Board Record Vol. 1) p. 373. Vol. 2 P. 1636

"Q. April 17, 1893, order of R. F. Westcott, 'To buy bonds,' $2,000, check No. 193. Were those bonds purchased for yourself?

A. No, sir. He gave me *some stock* shortly after my wife's death, as I remember, but I don't think he gave me any bonds.

Q. That money belonged to Mr. Westcott?

A. It may have been his, the bulk of everything I received was his."

Asked about a deposit of coupons to Carter's personal credit December 1, 1896, in Union Trust Company, among others, 10 Morris & Essex, Carter testified (Court Martial Vol. 19), p. 4443:

"A. I believe he (Westcott) had those Morris & Essex bonds for years; that is my impression, and the Lake Shore; because I knew he always had it in what he considered gilt edge securities, and those I believe are.

Q. You never owned any Morris & Essex yourself?

A. No, I never owned any Morris & Essex."

CARTER'S EXCUSE FOR HIS CONTRADICTORY TESTIMONY.

(Wyman Vol. 3) p. 1711:

"Q. (By Mr. Erwin.) And right straight along there, now, from that time (May 2, 1893), till you claim there was a trade made May 10, 1897 you have made up this statement, Defendant's Exhibit 96, in which you have balanced the account with settlements time after time between you and Mr. Westcott in which these specific securities you put down as being securities that are recognized as O. M. Carter's?

A. I find the documentary evidence to which I have had access shows that during all that period Mr. Westcott gave me the coupons off these securities and treated these bonds as mine, but during all that time he kept these bonds in his possession, and I always understood they were to be mine, but I never knew."

(Wyman Vol. 3) p. 1712:

"Q. Yet, you went on making settlements with Mr. Westcott right straight along for several years, and did not testify before the Board of Inquiry or Court Martial about that $50,000 as being invested in these securities, and made no claim before the Court Martial that these particular bonds, that you now claim came from your wife's estate, and with such little money as you say you may have put in, to wit, 5 Chesapeake, 5 Wabash 1sts, 5 Wabash, Detroit & Chicago X's, 5 Chicago & Eastern Illinois, 10 Chicago, Minneapolis, St. Paul & Omaha, and the 10 Morris & Essex, were bonds which you claimed as yours during that whole period?

A. It appears from the documentary evidence that Mr.

Westcott treated them as mine during the entire period, but, as I explained to you before, they were bonds that belonged to my wife's estate, bonds that I inherited from her, and some money, but I could not recall what these were, and I was unable to do so until I had access to the documentary evidence, and I have made up this list from documentary evidence and not from memory, and know it is correct.

Q. It appears at the same time you were collecting the coupons which you now claim, and recognized as yours by Mr. Westcott, you were collecting the coupons on a number of the securities that we have given in detail in your cross-examination which you claim were Mr. Westcott's, which you deposited in your personal account at the same time?

A. I did when Mr. Westcott gave them to me, or permitted me to have access to his box and told me I could have the securities.

Q. As a matter of fact, Captain Carter, from the 14th day of October, 1893, up to the time of the Board of Inquiry, there never was a time but what there was a box in the New York Safe Deposit Company which stood in the joint names of R. F. Westcott and Oberlin M. Carter?

A. That is correct, Mr. Erwin, but as I explained to you the box of Mr. Westcott's which held these securities I did not have access to after May 25, 1897, and he cancelled my access July 6th to that box when he took out a little box which would not have held the securities at all.

Q. That was July 6, 1897, the smaller box, but you had also one of your own in the Mercantile Safe Deposit Company, did you not?

A. Oh, yes, my brother and I had one in the Mercantile."

Vol. 14 R. 3441

(Wyman Vol. 3) p. 1632:

"Q. (Mr. Erwin.) These were the bonds, however, that were yours—that were yours you claimed, and treated as yours from that time on?

A. That is correct. Well, I want to say this, very often I would go to Mr. Westcott's box and find that he had changed those entirely.

Q. Did he change these particular ones?

A. Yes, because the way he kept them in his vault was this, he had a piece of brown paper wrapped around them and marked: 'Property of O. M. Carter,' and, depending upon how he felt, the bonds in the paper would be changed; but he never sold these bonds, but he always kept them in his own possession."

Joint Safety Deposit Box Westcott and Carter.

Vol 28

Exhibit 425 (Parsons) shows that R. F. Westcott and O. M. Carter on Oct. 14, 1893, rented a safety deposit box in The Safe Deposit Co. of N. Y. in their joint names, and that while several changes from one box to another were made, that they were at no time without a joint box in that company up to Dec. 13, 1897. Carter also had a separate box in name of self and wife in the Garfield Nat. Bank N. Y. from Aug. 8, 1892, to July 13, 1893. Exhibit 424 (Parsons). Carter also had a separate box in Mercantile Safe Deposit Co. N. Y. from March 16, 1893, to Feb. 8, 1899, to which he gave I. S. Carter access from April 15, 1893. Exhibit 423 Parsons Vol. 28

Carter testified on October 27, 1897, before the Board that he paid Westcott for the half interest in the Orange property by delivery back to Westcott of certain securities which Westcott had previously given him.

That the amount about $60,000 which he was to pay, consisted of securities a part of which had come through the intermediary of his wife, and a part direct from Westcott. (Vol. 2, pp. 923-4.) He refers to the securities to be turned over in March, 1897, as above, as "these securities which I had access to and which were intended by him to be mine, which were in my possession." (Vol. 2, p. 923.) He was then requested by the Board to consult his records and furnish a complete statement as to these securities. (Vol. 2, p. 923.) On October 29, 1897 (the same day, nearly a half million of assets were turned over to Carter by Westcott, which Carter claims was a gift) Carter wrote the Board: "The date of the transfer of securities for the Orange property I am unable to ascertain." (Vol. 2, p. 949.) In the present suit Carter has undertaken to give the date May 10, 1897, of the alleged transfer, and to describe the particular securities turned over by Carter in exchange for the half interest in the Orange property. Dft. Exhibit 96 F, Vol. 20, pp. 9588-9 and see *post*, p. 794.) $40,000 of the bonds he now claims he so turned over are identical with $40,000 of the bonds which he now claims were his wife's estate bonds. (See *post*, p. 794, and *ante*, p. 628.) And $30,000 of these identical bonds are included and described in Carter's receipt of October 29, 1897, (*post*, p. 827), and are now claimed by Carter to have been a gift to him by Westcott on that day.

Nevertheless five days after having retaken these securities into his possession as his own, according to his present statement, he wrote the Board a letter November 3, 1897, as follows:

"The securities which Mr. Westcott had given me to understand would be mine, and which were turned over in connection with the Orange property, were always in Mr. Westcott's box, who used frequently to change the character of the investments. *When he took them, and transferred or disposed of them for the last time, I am unable to say*, but it must have been subsequent to January 1, 1897." (Vol. 14, p. 6587.)

This false statement must have been made to deceive the Board, and keep them in the dark as to his receipt to West-

cott, for nearly half a million of assets on October 29, 1897. Carter had testified before the Board on September 24, 1897, that all the property he held in his own name which belonged to him on that date was about $18,000 in value. (Vol. 2, p. 636.) He had also testified before the Board that at that time all the property he held in his own name which belonged to Westcott was about $45,000 in value and that Westcott held nothing belonging to Carter. (Vol. 2, p. 581.)

The $45,000 which he here alluded to, he testified was the 8th avenue property which he said was morally Westcott's. (Vol. 14, p. 6431.)

Carter now says that when he told the Board (Vol. 2, p. 636) that all the property he then owned was only about $18,000, he meant exclusive of the Orange property. (Vol. 14, p. 6431.)

Carter testified on October 27, 1897, that this half interest in the Orange property was then his. (Vol. 2, p. 924.) Yet he now claims that he had traded this half interest to Westcott on October 11, 1897, for the $63,000 of bonds in the receipt of October 11, 1897, which the Government obtained from Westcott in 1900. (*Post*, p. 799.)

DIVISION NO. 6 (MAY 8, 1893), EXHIBIT 319. Vol. 30

Deposits of Disbursing Checks.

The following checks were deposited to the credit of J. F. Gaynor in the American Exchange National Bank, New York, May 8, 1893: Exhibit 243 (Shields) Vol. 31

1893			
May 8	Deposit of Carter's disbursing check		$30,000.00
	Deposit of Carter's disbursing check		3,834.22
	Deposit of Carter's disbursing check		6,447.38
	Deposit of J. F. Gaynor's check on Savannah Bank & Trust Co		4,718.40
	Total deposit to credit J. F. Gaynor		$45,000.00
	One-third of which is		15,000.00

Contemporaneous Checks, Exhibits 241, 242, 245. Vol. 31

1893			
May 8	Check J. F. Gaynor, deposited in account B. D. Greene		$22,360.00
May 8	Check J. F. Gaynor, favor unknown.	$7,640	
May 8	Check B. D. Greene favor unknown.	7,360	15,000.00

Contemporaneous Deposits.

1893			
	One-third of Division as above		$15,000.00
May 13	Exhibit 256, Credit R. F. Westcott with Union Trust Co., bills. Vol. 31	$ 500	
May 15	Exhibit 232, Credit R. F. Westcott with VanDeventer, currency. Vol. 31	3,000	3,500.00
	Balance of third unaccounted for May 13, 1906		$11,500.00

(R. F. Westcott had a safety box at this time in Safe Deposit Co. of New York. Exhibit 425, Parsons.) Vol. 28

1893

Additional Deposit.

May 23 Exhibit 256, deposit to credit of R. F. Westcott in Union Trust Co., bills Vol. 31 ..... $26,600.00
Of which accounted for by Exhibit 632 (Wyman Vol. 5), p. Vol. 1 of 1939-40 1341, a certified check cashed by R. F. Westcott, May 13, 1893...$15,000
Unaccounted for 100 15,100.00

May 23 Accounted for by balance of third not deposited May 13th as above... $11,500.00

Note: Mr. Johnson has entered the $11,500 only on Exhibit 319 but has shown how it was arrived at on Exhibit 590.

Carter Was in New York May 8, 1893.

That Carter was in New York City May 8th, and was back in Savannah May 13, 1893, is shown by Exhibits 468 and 469 (Wyman Vol. 1), pp. 200-201. Vol. 11 of 5231-8

Carter Makes False Returns of His Whereabouts.

Carter admits that his monthly report to the Chief of Engineers failed to report his absence from his station from May 8th to 13th (Wyman Vol. 3), p. 1078. Vol 13 of 5481

See Carter's attempted excuse (*ante*, p. 563).

INVESTMENTS.

1893
May 18 10 M Chi. & St. P. 7's purchased in account R. F. Westcott with C. H. VanDeventer, Exhibit 232 .Vol. 31 ..... $12,662.50

COLLECTION OF COUPONS.

The first coupons on the above bonds which matured after this purchase, were those which matured July 1, 1893. Ex-

Vol 31
hibit 251 shows that Carter deposited the coupons from these bonds in his personal account on the following dates:

July 1, 1893; Aug. 6, 1894; Jan. 3, 1896; July 20, 1896; July 2, 1897.

During 1895, the coupons from these bonds were deposited in account of R. F. Westcott, O. M. Carter, Attorney, and spent by Carter. Westcott was in Europe from Jan. 29, 1895, to May 12, 1896. Exhibit 558 Vol. 29

Exhibit 272 shows that these bonds were in the final receipt of Oct. 29, 1897, from Carter to Westcott. Vol 24 P 1275-6

Defendant's Expert, McPherson's Criticism.

Mr. McPherson testified (Wyman Vol. 4), p. 91: Vol 5 P 4689

"It may be well to state further in connection with that same Division, that if this $11,500 which was deposited on May 23, 1893, were conceded to have been received from Greene & Gaynor, it nevertheless was not invested in the bonds which it is here stated it was invested in."

The gist of McPherson's statement (Wyman Vol. 4), p. 92, Vol 5 P 4690 is as follows:

(1) *Westcott's Account in Union Trust Co.*

Vol 24
Exhibit 441. Westcott's account in the Union Trust Co. shows that he had on deposit:

1893		
May 17	Balance at close of business arising from what the Government concedes was Westcott's own fund except $500 deposited on May 13, 1893	$11,705.46
May 18	Check R. F. Westcott, favor of VanDeventer, used in part payment of bonds of which, if $500 came from Greene & Gaynor, at least $8,514.75 was Westcott's funds	9,014.75
		$2,690.71

(2) *Westcott's Account With Van Deventer.*

The account of R. F. Westcott with Van Deventer was closed and balanced May 11, 1893. Exhibit 435 Vol. 28

Following this:

1893			
May 15	Van Deventer sold 1 Houston & Texas bond conceded to be Westcott's		$ 648.75
May 15	Deposit currency claimed by Government to be Greene & Gaynor funds		3,000.00
May 18	Deposit check of Westcott on Union Trust Co. of which conceded to be Westcott's	$8,514.75	
	Of which claimed by Government as Greene & Gaynor funds	500.00	9,014.75
			$12,663.50
May 18	Bought by Van Deventer 10 Chi. M. & St. P.		12,662.50
	Balance due Westcott		$ 1.00

That is to say:

Amount paid for the bonds out of Westcott's funds May 15	$ 648.75
Amount paid for the bonds out of Westcott's funds May 18	8,513.75
	$9,162.50

From which McPherson concludes that the 10 Chi. M. & St. P. bonds were purchased mainly out of funds conceded to have been Westcott's. But we do not dispute that fact as far as it goes.

It must not be overlooked, however, that the Division by thirds took place on May 8, 1893, and that somebody then got the $15,000 third shown by the checks cashed that day.

Carter left New York and was back in Savannah on May 13th, as we have already seen.

Exhibit #25 Vol 28

Westcott had a safety deposit box, and he deposited May 13th $500 in currency and May 15th, $3,000 in currency, and May 23rd, at least $11,500 the source of which is not otherwise accounted for, unless it was the balance of the $15,000 which he had placed in his safety deposit box.

What difference in law does it make if Westcott having Carter's $11,500 in his safety deposit box, used on May 18, 1893, $9,162.50 of Westcott's own money on deposit with Van Deventer, to pay for bonds which he purchased and delivered to Carter, and then afterwards on May 23, 1893, deposited Carter's $11,500 to Westcott's credit, thereby making Westcott whole on the transaction, and leaving the accounting between Westcott and Carter as follows:

May 18	Balance of Carter's fund	$11,500.00
	Less advance by Westcott	9,162,50
May 18	Balance due Carter by Westcott	$ 2,337.50

Westcott's Check Stub-Book Entry.

On Westcott's check stub-book, Exhibit 558, is the following entry:

"No. 154, May 24, 1893, O. M. Carter.....$2,337.50"

This check was never presented for payment, and same amount, $2,337.50 was added back to the bank balance on stub opposite Check No. 193. The adjustment of this balance of $2,337.50 between Westcott and Carter will be shown later (*post*, p. 658). See transactions Post Pg 6

Following Trust Funds.

If Westcott had bought the 10 Chi. M. & St. P. bonds entirely with his own funds, and then had turned them over to Carter for funds impressed with a trust, received directly or indirectly from Carter, the Government would have the right to elect to follow the bonds in Carter's hands.

City of Spokane v. *First National Bank*, 68 F. R. 982. Van Allen vs Nath Bk 52 N.Y. 1-5 approved in Nat. Bk vs Ins Co 104 US 70

Where a fiduciary has mixed a trust fund with his own, and drawn out and dissipated a part of it, the rule attributing the first drawings out to the first payments into the account

"As long as trust property can be traced and followed, the property into which it has been converted remains subject to the trust; and, if a man mixes trust funds with his, the whole will be treated as trust property, except so far as he may be able to distinguish which is his."

Nat. Bank v. *Insurance Co.*, 104 U. S., 54.

"It was always allowed in equity, even upon the other view of the case, that, where trust money has been converted into lands, stocks, notes, etc., that the substitute may be claimed, when it can be identified by evidence (*Leuck* v. *Leuck*, 10 Ves., 517)."

Newton v. *Porter*, 5 Lans., 416.

Newton v. *Porter*, 69 N. Y., 133.

"In equity a distinction can never be drawn between the money misappropriated and the results of its investment in favor of the fraud-doer.

Nor does it make any difference that the investment turns out to be a profitable one, for, whatever the profit may be, it must belong to the *cestui que trust*."

Shaler v. *Trowbridge*, 28 N. J. Equi., 595-603.

DIVISION NO. 7 (JUNE 5, 1893), EXHIBIT 319. Vol. 30

The $75 Allowance Coincident to Carter's Trips to New York.

Commencing with Division No. 7, and running through all subsequent Divisions, the documentary evidence shows that, whenever there was a deposit of disbursing checks to the credit of the contractors in New York for division by thirds between Greene & Gaynor and the unknown, that when Carter was in New York, co-incident with the division, $75 was deducted from the amount for division, and the balance divided in thirds, and then the $75 was added to the third which went to *unknown*. A curious feature also appears in that in issuing the disbursing checks which were deposited in New York and divided, Carter nearly always issued the checks for an even amount plus an odd $75.

While the $75 allowance appears to have commenced con-

temporaneously with Division No. 6, no cognizance seems to have been taken of it in making Division No. 6 between Greene, Gaynor and the unknown, but a double allowance of $150 was made to the unknown in Divison No. 7.

Carter in New York.

Carter was in New York May 8, 1893, at date of Division 6 (*ante*, p. 640).

Carter was in New York June 5, 1893, at date of Division 7 (See Exhibits 296 and 297, Wyman Vol. 3), but Carter did not state this absence on his monthly reports, he admits this (Wyman Vol. 3), p. 1083.

Deposit of Carter's Disbursing Checks.

1893			
June 5	Exhibit 240. Deposit of Carter's disbursing checks in American Exchange National Bank, New York, to credit of B. D. Greene		$42,150.00
	Subtract:		
	Check June 15, 1893, B. D. Greene to W. T. Gaynor, Exhibits 242 and 247	$2,250.00	
	Check June 15, 1893, J. F. Gaynor to W. T. Gaynor, Exhibits 245 and 247	2,250.00	
	Arbitrary allowance 2 trips Carter to new York	150.00	4,650.00
	Amount for Division		$37,500.00
	One-third of this is		12,500.00

Check B. D. Greene favor B. D. Greene, paid June 5, 1893 ..... $ 2,800.00
Check B. D. Greene favor B. D. Greene, paid June 5, 1893 ..... 10,000.00
Check B. D. Greene, favor of unknown, paid June 6, 1893 ..... 1,500.00
Check B. D. Greene, favor W. T. Gaynor, paid June 17, 1893 ..... 12,500.00

Contemporaneous Currency Deposit.

1893
June 6 Exhibit 232 Vol 31 Deposit to credit of R. F. Westcott with Van Deventer..... $12,500.00

INVESTMENT.

June 7 Exhibit 232, Vol 31 Bought in account of R. F. Westcott with C. H. Van Deventer; 10 M Milwaukee, Lake Shore & W. 6's bonds $12,262.50

COLLECTION OF COUPONS.

(1) The coupons falling due November, 1893, were collected by R. F. Westcott by a deposit of them November 1, 1893, with C. H. Van Deventer. Exhibit 320 and 436, together with certain other coupons which Carter claims came from bonds of his wife's estate; the total deposit was $850, and Westcott remitted Carter a check for $715.62, November 15, 1893. Exhibits 255 and 64. Vol 31 Vol 20 9566

Carter admits (Defendant's Exhibit 96-C, p. 18) that $375 of this check of $715.62 of Westcott to him, was for a portion of the coupons deposited by Westcott, to-wit: "The portion which Carter claims came from bonds of his wife's alleged estate, but he claims that $250 of it was a present from Westcott to him for a portrait of Carter's late wife.

P. 646. Note
*Westcott had already in his hands a balance of the trust funds uninvested from Division 6 (*ante*, p. 643) of $2,337.50
Excess deposit over investment of June 7, 1893, as above 237.50

Balance of trust fund in Westcott's hands uninvested $2,575.00
See adjustment between Westcott and Carter. (*Post*, p. 658.)

Of this, however, he offers no evidence save his own testimony and pencil memoranda on the back of a health certificate (*ante*, p. 597).

The documentary evidence contradicts this, and shows that Westcott did remit for all the coupons in this $715.62 less an adjustment, certain other items than due him by Carter (See *post*, p. 671-2).

The coupons on these 10 M. L. S. & W. falling due May 1, 1894, were delivered by Carter to R. F. Westcott as evidence by a coupon bag in Carter's handwriting. Exhibit 326 (Wyman), and the proceeds were accounted to by Westcott to Carter as we shall see later (*post*, p. 680 et seq.)

The coupons on these 10 M. L. S. & W. falling due Nov. 1, 1894, were collected by R. F. Westcott by deposit in his account in Union Trust Co., as shown by Exhibits 320 and 444, and proceeds were accounted for by Westcott to Carter as shown by Table of Exhibit references (Wyman Vol. 3), p. 1252 (*post*, p. 729 et seq.)

(2) Carter deposited the coupons from these bonds during the year in 1895 in the R. F. Westcott, O. M. Carter, Attorney, account, and withdrew and spent the money therefrom while Westcott was in Europe.

(3) Coupons from above bonds were deposited to Carter's credit in his personal account May 13, 1896, Nov. 21, 1896, May 10, 1897, per Exhibit 251.

FINAL RECEIPT FOR BONDS. OCT. 29. 1897.

Carter had these 10 Mil. L. S. & W. bonds in his possession May 10, 1897, as evidenced by the fact that he deposited the coupons from them to personal credit in Union Trust Co., New York, on May 10, 1897, as shown by Exhibit 251. Carter went to Europe Aug. 7, and returned Sept. 10, 1897 (*ante*, p. 48).

The bonds were put in Westcott's hands directly or indirectly subsequent to May 10, 1897, by Carter. They were returned to Carter Oct. 29, 1897, along with over $400,000 of other securities, as evidenced by Carter's receipt to Westcott, Oct. 29, 1897, Exhibit 272. Vol 24 11178

Dr. F. P. Solley Testimony.

Dr. Fred P. Solley, a son-in-law of Mr. R. F. Westcott, testified (Wyman Vol. 9), p. 4603: That he accompanied R. F. Westcott when he took the securities to Mr. Stimson's office to turn over to Carter. That (Wyman Vol. 9), p. 4604, on the day before the return of the securities in connection with a request made by Westcott to Solley to accompany him to Stimson's office, Westcott told Solley in the language of the witness: Vol. 18 08879

> "Mr. Westcott certainly did tell me that the securities belonged to Carter; that he was keeping them for Carter, and Mr. Westcott as I remember, told me he had got these securities from B. D. Greene is my recollection."

Vol. 18 08879-80

(Wyman Vol. 9) p. 4606: That Westcott told Solley that the securities had been delivered to Westcott

> "After Captain Carter's return from Europe."

Objection by Defense.

This testimony was vigorously objected to by defendant's counsel, on the ground that it is hearsay and the conversation was not in the presence of Carter.

Reply.

It must be borne in mind that Carter is now claiming title to these securities, as well as to the 8th avenue real estate, against the claim of the United States, as being derived by him from R. F. Westcott under that receipt of Oct. 29, 1897,

Exhibit 272 (Shields Vol. 2), p. 873, and (Parsons Vol. 2), p. 80, and under an alleged verbal gift of the securities and of the land by redelivery of deed, on Oct. 29, 1897.

A declaration therefore by Westcott to third persons, while Westcott was in possession of the securities, and is alleged by Carter to have been in possession of the deed, against his own ownership of the securities or qualifying his possession, is admissible against Carter claiming the securities and land under an alleged conveyance or gift from Westcott made subsequent to the declaration.

"In regard to the declarations of persons in possession of land, there has been some difference of opinion; but it is now settled, that declarations in disparagement of the title of the declarant are admissible as original evidence. Possession is *prima facie* evidence of seizin in fee simple; and the declaration of the possessor that he is tenant to another, it is said, makes most strongly against his own interest, and therefore is admissible. But no reason is perceived why every declaration accompanying the act of possession, whether in disparagement of the declarant's title, or otherwise qualifying his possession, if made in good faith, should not be received as part of the *res gestae* leaving its effect, to be governed by other rules of evidence."

1 Greenleaf Evidence, 15th Ed., Sec. 109.

"Complaint is made that the court below admitted evidence of declarations made by Baker before he conveyed to the plaintiff to the effect that he had previously conveyed his title to Clifford and had no interest in the property in dispute; but the admissions of a grantor against his interest made while he held the title that his grantee has acquired or relies upon are always admissible against the latter unless he is protected by his character of an innocent *bona fide* purchaser, as the plaintiff here is not," citing *Boher* v. *Humphrey*, 101 U. S., 499.

Henderson v. *Wanamaker*, 49 U. S. App., 177 (8th Circuit).

"The pretense that the Melbourne plantation was intended as a pure gift by Oliver J. Morgan to the Kellam family, cannot be seriously maintained in view of the ex-

press *declarations* and provisions to the contrary made by Morgan *in his life time.*"

Mellin v. *Buckner,* 139 U. S., 409.

Additional Objection by Defendant.

The defense, however, have suggested (Wyman Vol. ....), p. ....., that Westcott delivered these securities and assets to Carter Oct. 29, 1897, because he (Westcott) was actuated from a fear that he himself would be prosecuted by the Government on account of the Board of Inquiry investigation then going on, and that he made Carter a present of these assets, to disentangle himself, leaving Carter to bear the brunt.

And the suggestion is made that therefore, Westcott in making the declarations that the property was his, was not making a declaration adverse to his interest and free from motive to misrepresent.

But if Carter's contention is correct that the Greene & Gaynor money did not purchase these half million dollars of assets turned over to Carter on Oct. 11 and 29, 1897, why should Westcott have any fear for himself? If he did have such a fear it could only have been a guilty fear because of a knowledge that money came from the fraudulent work done through conspiracy between Greene, Gaynor, Carter and himself, and on that theory, Westcott would be a co-conspirator, and his declarations to Solley while he was covering up the diverted assets, would be admissible as a declaration of a co-conspirator pending the enterprise. And that theory would utterly annihilate Carter's claim to the assets; if Westcott held them fraudulently he could not by gift confer any title to Carter.

But this theory of Westcott's being a partner with Greene & Gaynor, is disproved by the fact, that he never kept any of the plunder, and that Carter got and spent the income from the investments and is found with the *corpus* of the investments.

POOR COPY

Westcott's Testimony.

Carter returned from Europe early in September, 1897 (Shields Vol. 2), p. 851. Within a few days after his return he saw Westcott and told him he expected to be arrested and that he had gone to his safety deposit box and taken out all the securities and had turned them over to Greene and Gaynor at the Hoffman House in New York (Shields Vol. 2), p. 854. This was a positive statement from Carter one of the conspirators made pending their joint efforts to conceal the stolen funds, that *all the securities*, which must have included those of the last division were turned over to Greene and Gaynor. Carter then became distrustful of them, and asked Westcott to hold them—and Greene was to deliver them to Westcott the next day. But Gaynor notified Westcott by telephone from the Hoffman House, "That they had changed their minds and wasn't going to bring them." Shields Vol. 2, p. 854. What pressure Carter put upon them to overcome in part their expressed determination to hold on to the securities does not appear. But the day following Greene appeared at Westcott's house with a bag full of the securities, which were carried down and put in Westcott's safety deposit box. But Greene never did deliver *to Westcott* the $130,000 of U. S. bonds. He brought to Westcott only the other securities which were afterward listed on the receipts of Carter to Westcott of Oct. 11, 1897, and Oct. 29, 1897 (Record, 55,862).

Admissibility of Westcott's Testimony.

We insist that while R. F. Westcott's testimony may not be admissible to prove the substantive fact that Carter had Greene deliver Westcott these assets in September 1897, to hold for Carter, we think that it is clear that this testimony is admissible as notice against L. D. and I. S. Carter, who

are claiming as *bona fide* purchasers without notice, a lien for $22,500 on some of these same assets, under an alleged contract with O. M. Carter (Booth Record Vol. 1), p. 11 and (Vol. 3 of Exhibits) Booth, made May 15, 1900, and alleged oral agreement made between O. M. Carter and I. S. Carter, under which the claim is made that services were rendered from 1900 to 1901.

See Exception No. 1 to Report Booth, Master.

See Exception No. 7 to Report Booth, Master.

And to that extent it is also admissible against O. M. Carter under our theory that this claim of L. D. and I. S. Carter is made really to cover up in their names for the benefit of O. M. Carter that much of the assets, provided the case goes against O. M. Carter on the merits.

Westcott's testimony in the Greene & Gaynor hearing in New York, was given great publicity in the newspapers at the time. See copy of newspaper reports of it in evidence (Parson Record Vol. 1) and exhibits thereto, p. 41 *et seq.*

I. S. Carter was in New York a part of the time while the Commissioners hearing was going on, and I. S. Carter admits in his testimony, that he knew the trial was going on and that he was at least once or twice in the hall of the court room while the hearing was going on (Booth Record Vol. 1), p. 274.

He presents a bill in his claim of credits before the Master for amount paid for printing among other things, Mr. Blair's circular reviewing Mr. Westcott's testimony.

He and L. D. Carter were engaged at that time in working up the law points and facts to try and get O. M. Carter out of the penitentiary.

They had taken possession for O. M. Carter of these very assets which they knew Carter had testified in the Court

Judicial Admission by H. G. Stone before Judge Kohlsaat, Official Report of Argument, p. 69:

> "Mr. Stone: So far as I. Stanton Carter and L. D. Carter are concerned, there is no question but what they read the newspapers and read all that was published in the newspapers, and that in a general way they knew what Westcott was testifying about."

Martial that they belonged to R. F. Westcott, and I. S. Carter had testified there on the same line (*ante*, p. 571).

The repudiation by Mr. Westcott of that claim in his testimony in New York, made known in such a public manner, could not but have been brought to the knowledge of I. S. and L. D. Carter, and when they having these assets in hand, make a contract with Carter in which they seek to set up a claim against the assets for services to Carter, in and about them rendered subsequent to 1900, and claim that they are entitled to a lien on the assets, as *bona fide* purchasers without notice, we insist that they were put on notice by Mr. Westcott's repudiation of having given these assets to Carter, of the fact that Carter's title was fraudulent.

Westcott testified on the direct before the Commissioner August 10, 1900 (Shields Vol. 2), and I. S. Carter was in New York August 11, 1900, on the day Westcott's testimony was published, and he was in consultation with Mr. Rose, conducting the defense; he was also there September 26 to October 5, 1900, which were the days Westcott testified on cross-examination (Booth Vol. 1), p. 274.

With Carter convicted for embezzlement, I. S. and L. D. Carter were in such a position that they were bound to inquire as to his title to these assets placed in their hands, and they are put on notice of what they would have discovered if they had read or heard Westcott's testimony before the Commissioner given in 1900.

We are entitled, therefore, to show what Westcott's testimony was in order to charge them with notice of what they would have found out by reading it.

P. 653. Note

*Blair's circular reviewing the testimony of Westcott in the Greene & Gaynor removal proceedings is dated Jany. 26, 1901. Carter admits that the printing was paid for by his relatives, and that he saw it after it was printed. (Vol. 14, p. 6437.) The account of I. S. Carter before Booth, Master, shows that the money was paid over to Blair for it by I. S. Carter.

O. M. Carter testified he never saw the salary agreement of May 15, 1900, between I. S. Carter, attorney in fact, with L. D. Carter, but that he ratified it. (Vol. 14, p. 6436.)

Carter testified that Blair gave him a copy of Westcott's testimony to read. (Vol. 14, p. 6438.)

L. D. Carter's alleged contract of May 15, 1900, was for looking after the legal end of Carter's matters. If he earned his salary he must, therefore, have been as fully apprised of Westcott's testimony as was O. M. Carter. I. S. Carter and Blair.

Notice.

"A party cannot willfully shut his eyes to facts which would lead him to notice of a fact affecting his rights."
The Lulu, 10 Wall., 201.

"Every one is chargeable with notice of that which the law requires him to know, and of that which after being put up inquiry, he might have ascertained."
McClure v. *Township of Oxford*, 94 U. S., 432.

"Paper which expressly refers to another paper within the power of the party gives notice of the contents of that other paper."

Livingston v. *Maryland Ins. Co.*, 7 Cranch., 538.

"Where one is put upon inquiry, as by references contained in his title deeds, he is charged with knowledge of what he might have ascertained by due inquiry."
Oliver v. *Piatt*, 3 How., 410.

DIVISION NO. 8 (JULY 11, 1893), EXHIBIT 319. Vol 30

Carter in New York and Makes False Report of Whereabouts.

Vol 31 Vol 30 p. 5-296 Vol 3 p. 1107 Vol 3 p. 5-298

O. M. Carter was in New York on July 11, 1893, Exhibits 251-298 and 299. He admits he was there from July 9 to 14, 1893, and that in his monthly report to the Chief of Engineers he did not report that absence from his station (Wyman Vol. 3) p. 1107. For his attempted excuse for making this false report of his whereabouts, see (*ante*, p. 563 *et seq*).

THE W. T. GAYNOR BLIND ACCOUNT.

We have already referred (*ante*, p. 525) to the evidence showing that there was an account kept in the American Exchange National Bank, New York, in the name of W. T. Gaynor, which was really treated by the bank as a part of J. F. Gaynor's account, and which for the reasons shown by the evidence (*ante*, p. 526) we have designated the "Blind Account."

It was through this "Blind Account," as we shall presently see, that a number of the divisions by thirds between Greene, Gaynor and the unknown was accomplished.

We have also referred to the evidence (*ante*, p. 526) from defendant's own witnesses showing that W. T. Gaynor was not a partner with J. F. Gaynor and B. D. Greene in the profits of the contracts as a stockholder or other by-partnership.

Deposit of Carter's Disbursing Checks, July 11, 1893.

1893		
July 11,	Exhibit 246, Deposit of Carter's Disbursing checks in American Ex. Nat. Bank, New York, to credit of account W. T. Gaynor Vol. 31	$73,897.06
July 11,	Exhibit 240, Deposit of Carter's disbursing checks in American Exchange National Bank, New York, to credit of B. D. Greene Vol. 31	34,177.94
		$108,075.00
	Allowance trip Carter to New York	75.00
	Amount for Division	$108,000.00
	One-third of which is	36,000.00

Contemporaneous Checks, Exhibits 248, 240. Vol. 31

Check Wm. T. Gaynor paid July 11, 1893, favor unknown	$36,075.00
Check Wm. T. Gaynor paid July 11, 1893, deposit to credit of B. D. Greene	1,822.06

Distribution Shown as Above.

Deposit of Disbursing Check credit of W. T. Gaynor		$73,897.06
Deposit of Disbursing Check credit of Greene	$34,177.94	
Deposit of Gaynor, check credit of Greene	1,822.06	
Total credit to *Greene*	$36,000.00	
Check paid by Gaynor to *"Unknown"*	$36,075.00	
Check paid by Gaynor to Greene	1,822.06	
		37,897.06
Amount left in the *W. T. Gaynor account*		$36,000.00

Contemporaneous Deposits.

July 11, 1893, deposit credit R. F. Westcott with Reed & Flagg, Exhibit 239, *currency* Vol. 3 ..... $34,500.00

INVESTMENTS.

July 11, 1893, Bought in account R. F. Westcott, with Reed & Flagg, Exhibit 239, 30 M. Long Docks Vol. 3 ..... $36,500.00

Paid for as follows:

July 11, 1893, deposit of currency as above	$34,500.	
July 11, 1893, check R. F. Westcott on Union Trust Co., Exhibit 239-255 Vol. 3	2,000.	36,500.00

On Westcott's Check Stub-Book.

Exhibit 559 on stub of July 11 check for $2,000 is written "O. M. Carter, Reed & Flagg,"

P. 656. Note

Westcott had a balance of $2,575 of the trust fund in his hands from Division 7. (*Ante*, p. 646.)

On July 26, 1893, Reed & Flagg wrote to R. F. Westcott, as to the Erroad going into the hands of a receiver, but that Westcott need not be uneasy about Long Dock bonds, &c. (Vol. 14, p. 6541; Dfts. Exh. 54 Wyman) This letter came out of Carter's private papers in box B31. (Vol. 12, p. 5443) Why should this letter written to Westcott be found in Carter's private papers unless Westcott had sent it on to Carter? And why should Westcott have sent it on to Carter unless the Long Docks purchased fifteen days before belonged to Carter and not to Westcott?

October, 1893. The first coupons amounting to $900, which matured on these 30 long docks, were deposited to the credit of R. F. Westcott with Reed & Flagg on October 10, 1893, and were used in part payment of 10 M New York, Lackawanna & Western bonds, which were purchased in Division No. 11 (*post*, p. 665), which bonds went to Carter.

April 1894, Westcott deposited in Union Trust Co. to his own credit Apr. 6, 1894, coupons which matured on these 30 Long Docks, amounting to Exhibit 254 Vol 31 .....$ 900

Carter gave check to M. H. Westcott Apr. 3, 1894, Exhibit 65 Vol 31 ..... 100.

Check R. F. Westcott Apr. 3, 1894, favor of O. M. Carter, Exhibit 255 and 65 Vol 31 .....$1,000.

October, 1894. Westcott deposited in Union Trust Company to his own credit November 22, 1894, coupons on 30 Long Docks $900, together with $100 of other coupons, which he accounted to Carter for. (*post*, p. 729 et seq.)

April, 1895. Carter deposited the coupons on these Long Docks with Reed & Flagg, credit of Westcott account and used it to purchase bonds while Westcott was in Europe. (See Division 25.) Post 740

October, 1895. Coupons deposited by Carter in account R. F. Westcott, O. M. Carter, Attorney, and Carter withdrew and spent the money. (Exhibit 589.) Vol 29

April 1, 1896, Carter deposited the coupons to credit of his individual account in Union Trust Company, Exhibit 251. Vol 31

October 8, 1896. Do.

April 2, 1897. Do.

Third and Disposition of Bonds.

Included in final receipt Carter to Westcott October 29, 1897, Exhibit 272. Vol 24 P 1275

Proceeds tied up in suit *versus* O. M. Carter *et al.* in West Virginia. Exhibit 450 Vol 29 and Exh 432 Vol 28

P. 657. Note

*That the transactions entered by Reed & Flagg in Westcott's name, even prior to Westcott's trip in 1895 to Europe, were really transactions conducted personally by Carter is shown by the testimony of J. H. Reed before the Board that "Carter, acting merely as a messenger as it were or representative," had done business with them for Mr. Westcott prior to 1895. (Vol. 2, p. 889.)

And see Carter's personal orders for the $15,000 of N. Y. Lack. & W. bonds purchased through Reed & Flagg in Westcott's name on Sept. 11, 1893, and the return of the surplus deposit to Carter. (*Post*, p. 662.) And similar transaction on Aug. 10, 1893. (*Post*, p. 660.)

ADJUSTMENT BETWEEN WESCOTT & CARTER.

1893			
May 24,	Balance due Carter from Westcott *ante*, p. 643.)		$ 2,337.50
June 6,	Currency deposit, Div. 7. Ante P646		12,500.00
June 7,	Purchase 10 M Mil., L. S. & W. bonds. Ante P646	$12,262.50	
June 7,	Check R. F. Westcott to O. M. Carter, Exhibit 255. Vol 31	75.00	
July 11,	Currency deposit Division 8. Ante P656		34,500.00
July 11,	Purchase 30 M Long Docks..	36,500.00 Ante P656	
July 11,	Balance due Carter.....	500.00	
		$49,337.	$49,337.

Balance due Carter...$500.

On R. F. Westcott's check stub-book opposite Check No. 2, July 14, 1893, is entered:

"3460.08
O. M. C. 500.00

$3960.08
Dpst 305.00

3265.08
500.

3765.08
59.50

3705.58"

From which it appears that Westcott had started to issue a check to Carter on July 14, 1893, for the balance then due him but reconsidered it, and added the amount back to his bank balance.

DIVISION NO. 9 (AUGUST 7, 1893), EXHIBIT 319. Vol. 30

Carter in New York, But Made False Report of His Whereabouts.

Carter was in New York on August 7, 1893, as shown by Exhibit 300-301. Vol 16 3298 He admits this, and that he failed to state his absence from station in his monthly report to Chief of Engineers (Wyman Vol. 3), p. 1120. Vol 3 1307-8

Deposit of Carter's Disbursing Checks.

1893		
Aug. 3,	Deposit to credit of W. T. Gaynor in American Exchange Nat. Bank, Carters' Disbursing Check 246 Vol 31	$39,075.00
	Allowance Carter trip to New York)	75.00
	Amount for Division	$39,000.00
	One-third of which is	13,000.00

Contemporaneous Check.

Check W. T. Gaynor paid Aug. 7, 1893, favor unknown Exh 248 Vol 31 ..... $13,075.00

Contemporaneous Deposit of Currency.

1893		
Aug. 9,	Deposit Exhibit 239 Vol 31, credit R. F. Westcott with Reed & Flagg, currency	$13,000.00

INVESTMENTS'

1893

* Aug. 10. Purchased in a/c R. F. Westcott with Reed & Flagg, Exhibit 239, 10 M Delaware & Hudson Penn. Div. bonds Vol 31 $12,825.00

Paid for by:

Aug. 9, 1893, currency deposit Exhibit 239 Vol 31 $13,000.

Check (not described) . . do. 390.

$13,390.

Aug. 10, 1893, Check Reed & Flagg to to R. F. Westcott or O. M. Carter, deposited credit Carter in Union Trust Co, Exhibit 239 and 251 . Vol 31 . . . $ 565.

$12,825.00

COLLECTION OF COUPONS.

Exhibit 251 Vol 31 shows that Carter deposited the coupons from these bonds in his individual account in the Union Trust Company September 1, 1893, March 2, 1896, March 6, 1897, and September 1, 1893. was the first coupon period occurring after the purchase of these bonds. In 1894 they were collected by R. F. Westcott and accounted to by Westcott to Carter as we will see later. See ante P 817

In 1895, they were deposited by Carter in account of R. F. Westcott, O. M. Carter, Attorney, in Union Trust Company, and the money withdrawn and spent by Carter, Exhibit 589. V

FINAL DISPOSITION.

Included in receipt of October 29, 1897, Exhibit 272. Vol 24

Proceeds tied up in suit *versus* O. M. Carter *et al.*, in West Virginia. Exhs 450 Vol 29 and Exhibit 27 Vol 28

P. 660. Note

*Carter admits that Westcott was at Richfield Springs, and that Carter personally ordered the purchase of these bonds from Reed & Flagg on Aug. 10, 1893, though he claims it was done on Westcott's order to him. (Vol. 12, p. 5533–4–5.) Carter produced also for the first time at the present hearing a pencil memorandum on the back of a poem, which he claims he made at the time as follows: "Aug /93 Mama brought order from Daddy to buy 10 D. & H. bonds and to keep the bal for myself." (Deft. Exh. 56, *ante*, p. 597, and and Vol. 12, p. 5532.) He also produces a diary entry under date of Aug. 9, 1893, "Breakfasted with Mama and Daisy." (Vol. 12, p. 5533.) He says that he kept the balance, $565, because of the above memorandum. (Vol. 12, p. 5535.) This is practically an admission that the currency deposit with Reed & Flagg was previously made by Carter, although he claims it was Westcott's money.

DIVISION NO. 10, SEPT. 6, 1893, EXHIBIT 319.

Carter in New York, But Makes False Report of Whereabouts.

Carter was in New York September 6, 1893, Exhibit 302. Carter admits this, and admits he failed to state his absence in his monthly report to the Chief of Engineers. (Wyman Vol. 3), p. 1125.

Deposit of Disbursing Checks.

Sept. 6, 1893, Exhibit 246, Deposit of Carter's disbursing check to credit W. T. Gaynor in American Exchange Nat. Bank, New York $77,975.00

Less check W. F. Gaynor on American Exchange Nat. Bank, deposited in Southern Bank State of Georgia, Savannah, Exhibit 215, 248 ..... 5,000.00

$72,975.00

Less allowance trip Carter to New York. 75.00

Amount for division $72,900.00
One-third of which is 24,300.00

Contemporaneous Check.

Check W. T. Gaynor paid Sept. 6, 1893, favor unknown $25,175.00

Contemporaneous Deposits of Currency.

1893
Sept. 6 Deposit to credit of account R. F. Westcott with Reed & Flagg, Exhibit 239, currency $24,000.00

INVESTMENTS.

1893
Sept. 11 Purchased in account R. F. Westcott with Reed & Flaag, Exhibit 239, Vol 31
5 M New Jersey Junction 4s.....$ 4,800.00
15 M N. Y. Lack. & W. 1st Mtge. 6s.... 18,150.00

$22,950.00

Paid for by: Exh 239 Vol 31
Sept. 6, 1893, Currency deposit as above.....$24,000.00
Less
Sept. 18, 1893, Check Reed & Flaag to O. M. Carter, Exhibit 239..... 1,050.00

$22,950.00

The above bonds were ordered by Carter from Reed & Flagg as shown by their letter to Carter September 14, 1893, Exhibit G-5 (Wyman Vol. 1), p. 324.

COLLECTION OF COUPONS.

The coupons from the New Jersey Junction bonds were deposited to Carter's credit in his individual account in Union Trust Company as shown by Exhibit 251: Vol 31

August 7, 1894, February 10, 1896, August 17, 1896, March 8, 1897, August 3, 1897.

And same as to the New York, Lackawanna & Western bonds, as follows:

August 6, 1894, January 3, 1896, July 20, 1896, July 2, 1897.

They were collected in account of R. F. Westcott: Exh 251

New Jersey Junction, February 8, 1894, and February 2, 1895.

N. Y., Lack. & W., January 11, 1894, January 21, 1895, January 4, 1897.

These collections by Westcott were accounted for by Westcott to Carter as we shall see later.

The subsequent 1895 coupons on both of these sets of bonds were deposited in the R. F. Westcott, O. M. Carter, Attorney, account and drawn out and spent by Carter. Exhibit 589. Vol. 29

FINAL DISPOSITION.

The New Jersey Junctions in receipt of October 29, 1897, Exhibit 272. Vol. 24 P. 11275-6

The New York, Lackawanna & Western, in receipt of October 29, 1897, Exhibit 272. Vol 24 P. 11275-6

The proceeds of the New York, Lackawanna & Western were tied up in suit *versus* O. M. Carter *et al.* in West Virginia. Exhs. 450 Vol. 29 and Exh. 432 Vol. 28

The N. J. Junctions were sold, by I. S. Stanton through J. F. Bragg, New York, October 5, 1900. Vol. 10 P. 9915-6

DIVISION NO. 11 (OCTOBER 10, 1893), EXHIBIT 329.

Carter in New York.

Carter was in New York Oct. 10, 1893, Exhibits 303-304-305. Carter in this instance had a leave of absence and reported his absence from Oct. 4 to 21, 1893. (Wyman Vol. 3) p. 1130.

Deposit of Disbursing Checks.

Deposits in American Exchange National Bank, Exhibit 240:

1893		
Oct. 10,	Deposit to credit of B. D. Greene	$17,075.00
Oct. 12,	Deposit to credit of B. D. Greene	19,000.00
		$36,075.00
	Less allowance trip Carter to New York	75.00
	Amount for division	$36,000.00
	One-third of which is	12,000.00

Contemporaneous Checks.

Check, B. D. Greene on American Exchange National Bank, cashed Oct. 10, 1893, Exhibit 242	$12,075.00
Check, B. D. Greene on American Exchange National Bank, deposited in account W. T. Gaynor, American Exchange National Bank, Oct. 12, 1893, Exhibit 247	12,000.00

Distribution.

Deposits credit of B. D. Greene as above		$36,075.00
Check Greene deposited credit W. T. Gaynor	$12,000.00	
Check *cashed by Greene*	12,075.00	24,075.00
Left in Greene's account		$12,000.00

1893

Oct. 10, Deposit, Exhibit 239, credit R. F. Westcott, with Reed & Flagg, *currency*.....$11,000.00

Oct. 14, Deposit, Exhibit 251, credit O. M. Carter in Union Trust Co., *bills*..... 850.00

$11,850.00

INVESTMENTS.

Purchased in account R. F. Westcott with Reed & Flagg, Exhibit 239:

1893

Oct. 16, 3 M--N. Y. Lack & Western 1st Mtge 6's..$ 3,667.50

Oct. 18, 7 M— Do. .. 8,688.75

$12,356.25

Paid for by:

1893

Oct. 10. Currency deposit as above....$11,000.00

30 coupons from Long Dock bonds purchased in Division 8, Exhibit 239..... 900.00

Oct. 18. Check R. F. Westcott on Union Trust Co. Exhibits 239-255 456.25

$12,356.25

That Carter received on Oct. 18, 1893, a report of his purchase and started to issue a check to R. F. Westcott for $456.25, the balance due on the above purchase, and then changed his mind, is shown by the following entry on Carter's check stub-book Exhibit 63, from Box B-31, which he admits is in his own handwriting.

P. 665. Note

*By reference to Division 9 (*ante*, p. 659) and Division 10 (*ante*, p. 661), it will be seen that the deposits of currency from Greene & Gaynor funds were made directly with Reed & Flagg, and that in both cases, the excess of the deposits over the investments were paid over by Reed & Flagg, directly to Carter. Those transactions, therefore, did not change the balance of trust fund left in Westcott's hands at the end of Division 8. (*Ante*, p. 658.)

The balance of trust fund in Westcott's hands at the end of Division 8 (*ante*, p. 658) was $500.00

Subtract Westcott's check of Oct. 18, 1893, above $456.25

Balance of trust fund in Westcott's hands $43.75

Across Westcott's stub Oct. 18, '93, for the $456.25 is written "O. M. Ctr. due $43.75." (*Post*, p. 667.)

"No. 248."

"456.25/100
Date Oct. 18, 1893
Order R. F. Westcott
For Bal"
Cancelled Oct. 19, 1893"

COLLECTION OF COUPONS.

We have already seen that there were 15 M—N. Y., Lack. & Western 1st Mtge 6's bonds bought in Division No. 10. We now see that 10 M more of the same denomination of bonds were in Division 11. (We shall hereafter see 5 M more were bought in Division No. 25, April 9, 1895.)

Carter deposited the coupons from these New York, Lackawanna & Western bonds to credit of his individual account in Union Trust Co. per Exhibit 251, as follows:

Aug. 6, 1894; Jan. 3, 1896; July 20, 1896; July 2, 1897.

In 1895, while Westcott was in Europe, they were deposited in account of R. F. Westcott, O. M. Carter, Attorney, and Carter withdrew and spent the money, Exhibit 589.

The occasions on which Westcott collected the coupons from these 10 M bonds, were the same as stated under Division No. 10, in reference to the 15 M of similar bonds purchased Sept. 11, 1893, and the collections were accounted for by Westcott to Carter, as we shall see later.

FINAL DISPOSITION.

These bonds are included in final receipt of Oct. 29, 1893. Exhibit 272.

The proceeds of these New York, Lackawanna & Western bonds are tied up in *Suit* v. *O. M. Carter et al.*, in West Virginia.

ADJUSTMENT BETWEEN WESTCOTT & CARTER.

July 11, 1893, Bal. due by Westcott to Carter (See *ante*, p658.).....$ 500.00

Oct. 10, 1893, Deposit of currency in Westcott's a/c, Division 11 as above Ante P665..... 11,000.00

Oct. 10, 1893, Deposit Long Dock coupons as above. 900.00
Ante P665

$12,400.00

Oct. 18, 1893, Cost of 10 M—N. Y. Lack & Western bonds, purchased Division 11 as above Ante P665 $12,356.25

Balance due Carter.....$ 43.75
See Cost 671-2

Confirmation.

On Westcott's check stub-book, Exhibit 559, on stub of check No. 128, of Oct. 18, 1893, for $456.25, to Reed & Flagg, for the final payment of the bonds purchased as above, is written:

"Reed & Flagg
Capt Carter
O. M. C. tr
Due $43.75
$456.25."

Carter Not in New York, Nov. 6, 1893.

Carter admits he was not in New York on Nov. 6, 18
(Wyman Vol. 3), p. 1141.

He, in his testimony, claims that he made a trip to Charl
ton from Nov. 11 to 13th, as a witness and that he did n
report that absence on his monthly report; also that he ma
a trip from Savannah to Brunswick on duty Nov. 18 to
1893, and that he did not report that (Wyman Vol. 3),
1142.

Deposit of Disbursing Checks.

Nov. 6, 1893, Deposit Exhibit 240, in American Ex-
change National Bank, Carter's Disbursing check
credit B. D. Greene.....$18,000.
One-third of which is.....$ 6,000.

Contemporaneous Checks.

Check B. D. Greene on American Exchange National
Bank, paid Nov. 6, 1893, favor B. D. Greene....$ 6,000.
Check B. D. Greene on same bank, paid Nov. 13,
1893, favor unknown, dated Nov. 6, 1893..... 6,000.
Left in Greene's account..... 6,000.

Contemporaneous Deposits.

Nov. 8, 1893, Deposit credit R. F. Westcott, with
C. H. Van Deventer, Exhibit 232, currency.....$6,000.

Nov. 9, 1893, Purchased in account of R. F. Westcott with C. H. Van Deventer, Exhibit 232, 5 M Lake Shore & M. S. 2nd 7's $6,181.25

Paid for—Exhibit 435, by:

Nov. 8, 1893, Currency deposit as above	$6,000.00	
Check	100.00	
Nov. 9, 1893, Check, R. F. Westcott on Union Trust Co.	81.25	6,181.25

Collection of Coupons.

COLLECTION OF COUPONS.

The coupons on these 5 L. S. & M. S. bonds were collected by R. F. Westcott:

Dec. 8, 1893, through Van Deventer, Exhibits 436 and 320.

June 1, 1894, through Union Trust Co., Exhibits 444 and 320.

Jan. 22, 1895, through Union Trust Co., Exhibits 444 and 320.

These collections were accounted for by R. F. Westcott to Carter as we shall see later.

The coupons on these 5 L S & M. S. bonds were deposited in 1895 while R. F. Westcott was in Europe, in the R. F. Westcott, O. M. Carter, Attorney, account, and Carter withdrew and spent the money, Exhibit 589. The coupons on these 5 L. S. & M. S. bonds were deposited to credit of Carter's individual account in Union Trust Co., on following dates:

July 20, 1896; Dec. 1, 1896; June 2, 1897.

FINAL DISPOSITION.

These 5 L. S. & M. S. bonds are included in Carter's r
ceipt to Westcott, Oct. 11, 1897, Exhibit 269. Vol. 24 P. 1126

They were sold by J. H. Paul, Carter's agent, April
1900, through Tracy & Co., New York. Exhibit 403. Vol 28

THE DEPOSIT OF $6,000 CURRENCY WAS TREATED BY WESTCOTT AS CARTE

It will be seen by reference to "Investments," above th
Westcott paid VanDeventer $6,181.25 for the 5 M—Lake Sho
& M. S. bonds by a currency deposit of $6,000, an undescrib
check for $100 and a check of Westcott's on the Union Tru
Co. dated Nov. 9, 1893, for $81.25. From which it will a
pear that if the currency deposit of $6,000 was Carter's, th
nevertheless, Westcott had advanced $181.25 on the purcha
out of his own funds.

It is a significant fact that on Westcott's check stub-boo
Exhibit 559, on stub of the check for the $81.25, paid Vanl
venter, Nov. 9, 1893, Westcott wrote:

"Oct. 9 C. H. V. $181.25 O. M. C. $81.25"

Counsel for defendant has criticized this entry because t
date is written "Oct. 9" instead of "Nov. 9th," and becau
the stub-entry is written on the stub of another check issu
Nov. 9th and not on a separate stub.

An examination, however, of the check for the $81.25,
self, which is in evidence, shows that it is dated "Nov. 9
1893," and that it was not a check torn out of a stub-boo
but evidently written on a loose check, such as Mr. Westco
would have found on the desks for public use at the ban
The genuineness of the check is shown by the fact that
was credited to VanDeventer account on Nov. 9, 1893, and al
by its identification by the bank stamp and testimony of M
Hartshorne.

That Westcott later entered it on the stub-book on the bo
tom of stub No. 172, and inadvertently dated it Oct. 9, 189

instead of Nov. 9, 1893, is shown by the fact that the original check stub No. 172, for check Nov. 9th, 1893, shows that it too had been originally written "Oct. 9th" and then written over "Nov." 9th, while the whole series of checks both before and afterwards are correctly dated "Nov."

It further appears that Mr. Westcott entered this C. H. VanDeventer check on his stub-book again on Stub No. 176, as "C. H. V." and carried it out in the money column, "83.-00," and added it to his footings of the checks issued. And later on, opposite check No. 185, he adds the $83 back to his bank balance. Evidently he had discovered that he had already entered the payment to VanDeventer on Check No. 172, and that it was a check for $81.25, he writes within the margin of stub check No. 176, the figures $81.25.

ADJUSTMENT BETWEEN WESTCOTT AND CARTER.

Oct. 18, 1893, Balance due Carter by Westcott, see *ante*, p. 667,		$43.75
Nov. 1, 1893, Coupons collected by Westcott through VanDeventer, Exhibits 320-436:		
5 M—Chi. & E. Ill.	125.00	
5 M—C. & O.	$125.00	
5 M—Wabash	125.00	
10 Chi. & N. W.	175.00	
10 Mil. L. S. & W.	300.00	850.00
Nov. 8, 1893, Currency deposit, Division No. 12, R. F. Westcott with VanDeventer, Exhibit 232		6,000.00
		$6,893.75
Less:		
Nov. 8, 1893, Purchase in account R. F. Westcott, with VanDeventer, 5 L. S. & M. S. Division No. 12		6,181.25
		$ 712.50

Confirmation.

On R. F. Westcott's check stub-book Exhibit 559, on Stu
No. 177, Nov. 15, 1893, for check issued to O. M. Carter, fo
$715.62, the original of which chek is in evidence, is writte
in Westcott's handwriting $712.50. But in the money colum
he has entered:

" 671.87
43.75
715.62 "

For some unexplained reason, he issued the check for $3.1
in excess of the amount which he recognized by his $712.5
entry, as being due from the bond transaction.

It appears from Carter's check stub-book, Exhibit 64, tha
on Oct. 30, 1893, he had paid out $22.48 for Westcott on ac
count of Taxes on Roanoke, Va., property (Conquest matter)

It is probable that the $3.12 was the balance of some ad
justment of some small items not appearing on the stub book
between Westcott and Carter of this $22.48, paid out by Car
ter.

Adjustment December 4, 1893.

Dec. 1, 1893, Collected by R. F. Westcott through C. H. VanDeventer, Exhibit 436:	
10 M—Chi. St. P. M. & Om. coupons	$300.0
10 M—Morris & Essex coupons	350.0
	$650.0
Dec. 4, 1893, Check R. F. Westcott favor of O. M. Carter, Exhibits 255 and 64	$650.0

Exhibit 559, Westcott's check stub-book, shows entry o
stub for this check as follows:

No. 207:
"Dec. 4, 1893
O. M. Carter
Bal due Dec. 3." $650.0

DIVISION NO. 13, DECEMBER 4, 1893. EXHIBIT 319.

Carter Was in New York December 4, 1893.

That Carter was in New York is shown by Exhibit 306-307. Carter admits this, and on this occasion he had leave of absence and reported his absence Dec. 3rd to 6th, in his monthly report (Wyman Vol. 3), p. 1144.

Deposit of Disbursing Checks.

Dec. 4, 1893, Carter's disbursing checks collected by the American Exchange National Bank, New York, and credit to accounts, Exhibits 241, 247, 249, 249-A, 249-B as follows:

Dec. 4, 1893, credit W. T. Gaynor	$21,000.00
Dec. 4, 1893, credit B. D. Greene	21,000.00
Dec. 4, 1893, *cash* paid J. F. Gaynor	21,075.00
	$63,075.00
Less allowance Carter's trip to New York	75.00
Amount for division	$63,000.00
One-third of which is	$21,000.00

Contemporaneous Deposits.

Dec. 4, 1893, Deposit credit R. F. Westcott with C. H. VanDeventer, Exhibit 232, currency	$16,000.00
Dec. 4, 1893, Deposit credit R. F. Westcott with Union Trust Co., Exhibit 256, bills,	5,000.00
	$21,000.00

INVESTMENTS.

Purchased in account R. F. Westcott, with C. H. VanDeventer; Exhibit 232, Dec. 8, 1893, 10 M —Mil. St. Paiul 8's $11,637.50

Paid for out of part of the currency deposit above, leaving an uninvested balance in R. F. Westcott's hands of $9,362.50.

For balance of Investment see Division No. 14.

COLLECTION OF COUPONS.

The coupons on these 10 M—Mil. & St. Paul 8's were collected in account of R. F. Westcott as follows:

Feb. 6, 1894, and Feb. 1, 1895, through Union Trust Co., Exhibit 444.

The coupons on same were deposited by O. M. Carter to the credit of his individual account as shown by Exhibit 251: Aug. 6, 1894; Feb. 10, 1896; Aug. 17, 1896; March 6, 1897; Aug. 3, 1897.

The coupons on same in 1895, while Westcott was in Europe, were deposited in the R. F. Westcott, O. M. Carter, Attorney, account, and the money was drawn out and spent by Carter. Exhibit 589.

FINAL DISPOSITION.

Theese 10 Mil. & St. Paul bonds are included in Receipt of Oct. 11, 1897. Exhibit 269. Theese bonds matured Feby. 1, 1898, and the face value of same, $10,000, was collected by L. Laflin Kellogg Mch. 12, 1898. Exhibit 418.

ADJUSTMENT BETWEEN WESTCOTT AND CARTER.

For adjustment between Carter and Westcott, see Division No. 14 (*post*, p. 678).

DIVISION NO. 14, JANUARY 8, 1894, EXHIBIT 319. Vol 30

Carter Was in New York Jan. 8, 1894, and Made False Report of Whereabouts.

That Carter was in New York Jan. 8, 1894, appears from Exhibits 308-309. Carter admits this and that he failed to report his absence on his monthly report. (Wyman Vol. 3) p. 1150.

Deposit of Disbursing Checks.

Vol 31

Jan. 8, 1894, Exhibit 246, Deposit of Carter's Disbursing checks in American Exchange National Bank, New York, to credit of W. T. Gaynor ... $49,575.00
Allowance trip Carter to New York 75.00

Amount for division $49,500.00
One-third of which is 16,500.00

Contemporaneous Checks, Exhibit 248, 241. Vol 31

Check Wm. T. Gaynor paid Jan. 8, 1894, favor unknown $16,575.00
Check Wm. T. Gaynor, paid Jan. 8, 1894, deposit credit B. D. Greene 16,500.00

Contemporaneous Deposits.

Jan. 8, 1894, Deposit credit of R. F. Westcott with C. H. VanDeventer, Exhibit 232, *currency* Vol 31 $14,000.00
Jan. 8, 1894, Deposit credit of R. F. Westcott, with Union Trust Co., Exhibit 256, *bills* Vol 31 ... 2,500.00

$16,500.00

FINAL DISPOSITION.

St. Louis & Iron Mountains.

The St. Louis & Iron Mountain bonds were sold in account R. F. Westcott with Reed & Flagg, April 19, 1897, Exhibit 239, and proceeds applied to Orange, N. J., investment. See *post*, p. 787.

The L. S. & M. S.

The Lake Shore & M. S. are included in receipt of Oct. 11, 1897, Exhibit 269, and were sold April 3, 1900, by J. H. Paul, Carter's agent, through Tracy & Co. Exhibit 403.

The New York Central 7's.

The New York Central 7's are included in receipt of Oct. 11, 1897, Exhibit 269 and were sold Feb. 6, 1899, by J. H. Paul, Carter's agent through S. C. Millett. Exhibit 402.

ADJUSTMENT BETWEEN WESTCOTT AND CARTER.

We have already seen (*ante*, p. 672) that the balance due from Westcott to Carter Dec. 3, 1893, was $650, and that this balance was settled by a check from Westcott to Carter Dec. 4, 1893.

Taking up the subsequent transactions between them from that point, the following table from (Wyman Vol. 3), p. 1173, shows the account between Westcott and Carter through the transactions in Divisions No. 13 and 14, and including the collection by Westcott of coupons, and his accounting to Carter therefor during the same period:

"Receipts R. F. Westcott.

Dec. 4, 1893, Deposit a/c R. F. W. with Van de V. Exhibit 232, 435, currency	$16,000.00
Dec. 4, 1893, Deposit, Exhibit 256, a/c R. F. W. with U. T. Co. bills,	5,000.00
Dec. 8, 1893, Deposit a /c R. F. W. with Van de V. Check Ex. 435 436 for coupons 5 L. S. & M. S. Ex. 320, 436	175.00
Jan. 8, 1894, Deposit a/c R. F. W. with Van de V. Ex. 232 & 435, currency	14,000.00
Jan. 8, 1894, Deposit Ex, 256, a/c R. F. W., U. T. Co., bills	$ 2,500.00
Jan. 8, 1894, Payment, Ex. 64, by O. M. Carter for R. F. W., for Huey	23.25
Jan. 8, 1894, Deposit a/c R. F. W., U. T. Co., Ex. 446, 320, Df. Ex. 98, coupons	1,225.00
Jan. 15, 1894, Payment by O. M. Carter to M. H. Westcott, Exhibit 64	100.00
	$39,023.25

Disbursements R. F. Westcott.

Dec. 8, 1893, Bought through Van de V. 10 Mil. & St. P.	$11,637.50	
Dec. 21, 1893, Check R. F. W. deposited U. T. Co. credit a/c O. M. C., Ex. 256	1,244.88	
Jan. 10, 1894, Bought, Ex. 232, 435, through Van de V., 10 L. S. & M. S.	12,312.50	
Jan. 10, 1894, Bought through Van de V. Ex. 232, 435, 5 N. Y. Central,	6,206.25	
Jan. 12, 1894, Bought, Ex. 232, 435, through Van de V. 2 St. L. & Iron Mts,	2,052.50	
Jan. 31. 1894, Check R. F. W. to O. M. C. Jan. 27, 1894, Ex. 64	171.14	33,624.77
		$5,398.48
Jan. 12, 1894. Ck. R. F. W. for bill of Manhattan Storage Co. Df. Ex. 61		40.92
Excess receipts over disbursements		$5,357.56

Up to end of transactions contemporaneous with Division 14."

SALE OF 5 WABASH 1ST MORTGAGE 5'S BY WESTCOTT TO CARTER

It appears by Exhibit 445, Westcott's account with C. H. VanDeventer that the following purchase of bonds was made by Westcott:

Jan. 20, 1890: 10 Wabash 1st 5's.

This was prior to Carter's Marriage.

Westcott sold 5 of these bonds through C. H. VanDeventer, Exhibit 232, to-wit:

Nov. 21, 1893, 5 Wabash 1st 5's sold for $5,125.00. The remaining bonds not then sold by Westcott were 5 Wabash 1st 5's numbered, as shown by Exhibits 445 and 232, as follows: 16135 to 16138-16140.

Westcott Collects the Coupons to Nov. 1, 1893.

It further appears that from the time of their purchase in 1890, up to Nov. 1, 1893 (Exhibits 437 and 657), Westcott collected the coupons on these 5 Wabash 1st 5's and Carter never did collect them, nor were they accounted for to Carter during that period.

Transferred to Carter between Nov. 1, 1893, and May 1, 1894.

The Coupon Bag.

There is in evidence Exhibit 326 (Wyman) a small paper "Coupon Bag," which came from Mr. Westcott's papers (Wyman Vol. 1), p. 46.

The following is what was on the envelope. The words in italic and the figures, being the ink script, are in Carter's handwriting. The words in parenthesis, being the pencil memoranda in Westcott's handwriting, and the rest of it being the printed form on the envelope:

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THE MERCANTILE SAFE DEPOSIT COMPANY.

EQUITABLE BUILDING, NEW YORK.

10	*Wabash* (Wm. Central Trust Co.)	25.	250.00
10	*M. L. S. & W.* (N.W.)	30.	300.00
10	*N.W*	17.50	175.00
5	*C. & E. I.* (Central Trust)	25.	125.00
5	*C. & O.* (Drexel Morgan)	25.	125.00
From *O. M. Carter, for May 1, 1894*			975.00

Carter admitted in cross-examination that what was on the envelope indicated by the italic letters and the figures were in his handwriting and that he had the coupons above described in the bag in his safety deposit box in the Mercantile Safe Deposit Company (Wyman Vol. 3), p. 1176.

Carter claims, however, that Westcott clipped off the coupons from the 10 Wabash and from the 10 M. L. S. & W. and from the 10 Chi. & Northwestern bonds on April 4, 1893, and made them a present to Carter, and that Carter added the coupons from the 5 Chi. & E. Ill. and 5 C. & O. and put them in the envelope in his safety deposit box, and that the next day, April 5, 1893, he, Carter, took them out together and gave them back to Westcott with $25 cash and received a check from Westcott on April 5, 1893, for the same for the $1,000 (Wyman Vol. 2), p. 222. That such was not the real transaction is shown by the following:

Westcott's Stub Entries.

In Westcott check stub-book Exhibit 561, the following stub entry appears:

"No. 500.
May 4th, 1894.
Deposit Coupons $975.00
O. M. Carter,
R. F. Westcott. "

The check for this was never delivered to Carter, but among Mr. Westcott's papers after his death was found (Wyman

Vol. 3), p. 1187, the original check canceled which is in evidence as Complainant's Exhibit 611 (Wyman). The check was made payable to R. F. Westcott and is indorsed "For deposit to credit of O. M. Carter, R. F. Westcott."

On the stub-book opposite check No. 522, the amount of the $975 is added back to the bank balance, with Mr. Westcott's notation in pencil, "Carter ck. 975."

Mr. Westcott deposited $975, the amount of these coupons, to his own credit in the Union Trust Co., on May 4, 1894. Exhibits 444 and 320. There can be no doubt, therefore, that Westcott started to deposit in the Union Trust Co. check No. 500, to Carter's credit for the coupons, but did not do so at that time.

But Mr. Westcott issued a second check to Carter to cover this collection of coupons.

In Exhibit 561, Mr. Westcott's stub-book, is entered the following:

"No. 530.
May 25, 1894,
O. M. Carter, $960.00

(And in pencil in Mr. Westcott's handwriting),

960 check.
15 cash

975 Coupons May 1st."

Carter admits he was in New York on May 15th, 1894.

Carter Produces the $960 Check.

Carter produced from his own possession the original R. F. Westcott check No. 530, dated May 25, 1894, in his favor for $960 before Examiner Wyman on Jan. 17, 1905. (Wyman Vol. 2) p. 62.

Carter has entered it in his statement of account Defendant's Exhibit 96-D, under date of May 25, 1894, as a gift from Westcott to him.

The check is endorsed by O. M. Carter and Austin R. Myres and bears the stamp of the Union Trust Co., showing that it was paid June 2, 1894. Vol. IX 9654 7-8

Carter claims that he got possession of this check again in the summer of 1899 from R. E. Westcott (Mr. R. F. Westcott was at that time in Europe) and that he took possession of this check and another one for $2,000 for the purpose of proving that Mr. R. F. Westcott had made him presents (Wyman Vol. 2), pp. 60 and 220. 9654 9706 9855 9566

We will point out later the collections for which Westcott did remit to Carter the $1,000 on Apr. 5, 1894. Post. P. 696,

The Important Bearing of the coupon Bag Transaction.

At present we cite the fact of Carter's possession of the 5 Wabash 1st 5's on May 1, 1894, and the fact that the proceeds of the coupons from them, which ripened May 1, 1894, is proved to have gone to him, as evidence of the fact that there had been a change in the possession and ownership of these 5 Wabash 1st 5's between Nov. 1, 1893, and May 1, 1894.

At this time the only Wabash 1st bonds held or claimed to be held by either Carter or Westcott were

The 5 Wabash 1st bought by Westcott Jan. 20, 1890, and which the Government claims were transferred to Carter after Nov. 1, 1893, but which Carter claims were still Westcott's, and

The 5 Wabash 1sts, bought by Carter through VanDeventer, which Carter claims constituted part of his wife's estate.

Subsequent Collection of Coupons on the 5 Wabash 1st.

R. F. Westcott collected the coupons, Exhibits 444 and 320:

Nov. 22, 1894, on	10 M—Wabash 1st	$250.00
	5 M—Chi. & E. I.	125.00
	5 M—C. & O.	125.00
	10 M—Chi. & N. W.	175.00
	10 M—M. L. S. & W.	300.00
	35 M—U. S. 5's	437.50
		$1412.50

There was a complete accounting by Westcott to Carter for this Nov. 22, 1894, collection of coupons (See Wyman Vol. 3), p. 1252, and (*post*, p. 729 et seq.)

May 21, 1895, the next coupon period, and Nov. 1, 1895, the coupons were deposited in the R. F. Westcott, O. M. Carter, Attorney, account, and Carter withdrew and spent the money, Exhibit 589. Carter deposited the coupons to the credit of his individual account in the Union Trust Co. May 13, 1896, and Nov. 21, 1896.

Final Disposition of the Wabash 1st.

The 10 Wabash 1sts, which included the 5 originally Carter's and the 5 originally Westcott's, were sold together by R. F. Westcott through Reed & Flagg, May 19, 1897 (Exhibit 239), and proceeds applied to the Orange, N. J. investment (*post*, p. 757).

It is therefore demonstrated, that Westcott got the benefit of the income of his original 5 Wabash 1st up to Nov. 1, 1893, collection of coupons, and that Carter got the income from same commencing with the coupons maturing May 1, 1894, until the bonds were sold, and it will be shown (*post*, p. 787) that the proceeds of the sale of the bonds also went to Carter in the Orange, N. J., property.

We insist, therefore, that the evidence shows that there

was a transfer of these 5 Wabash bonds from Westcott to Carter between Nov. 1, 1893, and May 1, 1894.

The Price at Which the Transfer Was Made.

R. F. Westcott had sold Nov. 21, 1893, through Van Deventer, 5 M of the 10 Wabash 1sts which he then held at the price of $5,125. (*Ante*, p. 680.) Since the transfer to Carter of the other 5 Wabash took place shortly thereafter, Mr. Johnson, has entered the transfer on Exhibit 319, under date of May, 1894, as under date of May 1, 1894, the coupons are shown to have been in coupon bag in Carter's possession, and at the market price shown by the sale of the other 5 bonds, to-wit, $5,125.

Adjustment After Transfer of 5 Wabash 1sts From Westcott to Carter.

Jan. 31, 1894. Balance in Westcott's hands uninvested after Division No. 14 (*ante*, p. 679)	$5,357.56
Transfer Westcott to Carter of 5 Wabash 1sts	5,125.00
Balance due Carter	$ 232.56

Just exactly how this balance of $232.56 was settled between Westcott and Carter does not appear by the bank accounts or stub-books in evidence.

There is a check of R. F. Westcott dated Dec. 29, 1893, paid Jan. 2, 1894, favor of Phineas Smith, endorsed "Woodland Cemetery," for $195. If this was an expenditure, which was treated as a charge against Carter, it would leave but $37.56 unaccounted for, which may be attributed to the fact that the 5 Wabash 1sts were estimated by Mr. Johnson in stating the account at the market price Nov. 21, 1893, at $5,125, while they may have been transferred in January, 1894, at a slightly higher figure.

Undoubtedly the check of R. F. Westcott to Carter Jan.

31, 1894, for $171.14, which is included in the statement (*ante*, p. 679), by which the balance $5,357 was reached, was a settlement check, as indicated by the odd amount for which the check was drawn.

We may therefore conclude just as the defendant does (See Defendant's Exhibit 96-D, pp. 23-24), that Westcott's check to Carter Jan. 31, 1894, for $171.14, made a complete settlement between the parties.

DEFENDANT'S EXHIBIT 96-D.

It is true, however, that the defendant reaches the conclusion in quite a different way.

Carter reaches the balance Jan. 31, 1894, $171.14, by picking out from the $1,225. of coupons, collected by Westcott Jan. 11, 1894, the item of $125 of coupons from the 5 Wabash, Detroit & Chicago bonds which Carter claims belonged to his wife's estate, and bringing that item only into his statement of account, Exhibit 96-D, p. 23, as if Westcott had collected only those Wabash coupons, at that time.

Fictitious Entry to Reach His Balance.

Carter then brings in an alleged item, which does not appear in the documentary evidence, and bases it upon the following entry in his Diary under date of Jan. 22, 1894:

"Jan. 22, 1894.
Servants arrived, Gave them charge of house. Henry & Mary. Daisy pd out for them 36.19 Busy in office."

Carter then brings into 96-D, the entry

"1894
Jan. 22. R. F. Westcott re-imbursed Daisy Westcott amount paid on account of O. M. Carter .....$36.19"

Comment.

We insist that the Diary entry is not admissible in evidence, as matter of law (*ante*, p. 554). That it is not free from the suspicion of having been manufactured to reach an amount which with the other items which he brings in, would just make the balance check of $171.14. That it adds nothing in strength to Carter's defense, because a man who would commit the frauds indicated by the other evidence, would not hesitate to manufacture a diary entry to help reach a balance.

P. 687. Note

*Conclusions as to the 5 Wabash 1st bonds.—The fact that Westcott transferred to Carter the beneficiary interest in the 5 Wabash 1sts between Nov. 1, 1893, and May 1, 1894, and that these bonds were worth at that time about $5,125, is proven. (*Ante*, p. 680.)

It is also proven (*ante*, p. 679), that on Jan. 27, 1894, Westcott had in his hands $5,357.56 of the trust fund, which he never accounted to Carter for, unless the transfer of those bonds to Carter was a sale to Carter, and unless the $195 check Dec. 29, 1893, paid by Westcott to the cemetery was on account of Carter. As this is the only instance in the entire series of transactions in which Westcott is not shown by positive documentary evidence to have made a complete accounting to Carter, for whatever of the trust funds that went into his hands, the inference is persuasive that there was an actual sale of these bonds by Westcott to Carter. If, however, it was not a sale, the transaction would amount to Carter making a present to Westcott of $5,357.56 and Westcott making a present at the same time to Carter of the 5 Wabash bonds, which the law would treat as an exchange. (*Van Allen* v. *Amer. N. Bk.*, 52 N. Y., 1–5.) There is no more reason to accept Carter's claim to them as a present from Westcott, than to accept his story that the other half million of assets which he claims were presents.

DIVISION NO. 15 (FEBRUARY 5, 1894) EXHIBIT 319.

Carter Not in New York.

Carter admits he was not in New York during month February 1894 (Wyman Vol. 3), p. 1153.

Deposit of Disbursing Checks.

Feb. 5, 1894. Deposit in American Exchange National Bank, Exhibit 240.	
Deposit to credit B. D. Greene	$54,000.
One-third of which is	18,000.

Contemporaneous Checks.

Check B. D. Greene on American Exchange Nation Bank, *paid Feb.* 5, 1894, favor J. F. Gaynor, Exhibit 242	$18,000.
Check B. D. Greene on American Exchange National Bank, deposited in account W. T. Gaynor, American Exchange National Bank, Feb. 5, 1894, Exhibits 242, 247	18,000.
Left in Greene's account	18,000.

Distribution.

Deposits credit B. D. Greene as above		$54,000.
Check Greene deposited to credit W. T. Gaynor	$18,000.00	
Check cashed by J. F. Gaynor	18,000.00	36,000.
Left in Greene's account		$18,000.

Contemporaneous Deposits.

Feb. 5, 1894, Deposit credit R. F. Westcott with C. H. Van Deventer, Exhibit 232, currency	$10,000.00	
Feb. 5, 1894, Deposit credit R. F. Westcott, with Union Trust Co. N. Y. Exhibit 256, bills	8,000.00	$18,000.

Feb. 6, 1894, Purchased in account of R. F. Westcott, with C. H. Van Deventer, Exhibit 232, 5 M, Lake Shore & M. S. 2nds 7's Vol 31		$ 6,206.25
Feb. 6, 1894, Purchased in account of R. F. Westcott with C. H. Van Deventer, Exhibit 232, 2 M—N. Y. Central 1sts 7's Vol 31		2,500.00
Feb. 15, 1894, Purchased in account of R. F. Westcott, with C. H. Van Deventer, Exhibit 232, 6 M, New York Central 1sts 7's Vol 31		7,492,50
Feb. 16, 1894, Purchased in account of R. F. Westcott with C. H. Van Deventer, Exhibit 232, 2 M, New York Central 1sts 7's Vol 31		2,497.50
		$18,696.25
Paid for, Exhibit 435, by: Vol 28		
Feb. 5, 1894, Currency deposit as above		$10,000.00
Feb. 7, 1894, R. F. Westcott check on Union Trust Co., Exhibit 441 Vol 28		8,657.75
		$18,657.75
Deduct:		
Feb. 1, 1894, Interest charge to R. F. Westcott	$3.15	
Feb. 13, 1894, Charge to R. F. Westcott for cost of check book	2.00	5.15
		$18,652.60
March 5, 1894, R. F. Westcott's check on Union Trust Co., Exhibit 441, body of check written by Carter and delivered to Van Deventer by Carter, which fact he admits (See Record Wyman Vol. 4), p. 303. Vol 28 Vol 15 Pg 90		43.65
		$18,696.25

COLLECTION OF COUPONS.

Lake Shore & Western.

The collection of coupons on these 5 M Lake Shore & M. S. 2nds 7's bonds, subsequent to their purchase, were precisely the same as shown for the collection of coupons on the other lots of same bonds purchased in Divisions Nos. 12 and 14 (*ante*, p. 669 and 676).

New York Central.

The collection of coupons on these 10 N. Y. Central bonds subsequent to their purchase were precisely the same as shown for the collection of coupons on the other lot of same bonds purchased in Division No. 14 (*ante*, p. 677).

FINAL DISPOSITION.

Both the Lake Shore & Western bonds and the New York Central bonds were included in Receipt of Oct. 11, 1897, from Westcott to Carter. Exhibit 269. Vol 24 p. 11261

The Lake Shore & M. S. were sold by J. H. Paul, Carter's agent ,through Tracy & Co., New York, April 3, 1900. Exh. 443

The New York Centrals were sold by J. H. Paul, Carter's agent Feb. 6, 1899, through S. C. Millett. Exh. 442 Vol. 28

Uncompleted Adjustment Between Westcott and Carter Shown.

Deposits in Union Trust Co.

Feb. 5, 1894, Currency deposit in Westcott's account in Union Trust Co. as above Ante p. 688		$8,000.00
Coupon deposits to R. F. Westcott's credit in Union Trust Co., per Exhibit 444. Vol 28		
Feb. 6, 1894, 10 Chi. N. W.	$175.00	
Feb. 6, 1894, 10 Mil. & St. Paul	400.00	
Feb. 6, 1894, 2 St. L. & I. Mt.	50.00	
Feb. 8, 1894, 5 N. J. Junc.	100.00	725.00
		$8,725.00

Withdrawals From Union Trust Co.

eb. 6, 1894, Checek R. F. Westcott favor Van De-
venter on account of purchase of securities as
above. $8,657.75

Balance Carter's fund in U. T. Co. . . . . $ 67.25

Confirmation.

Exhibit 560, Westcott's check stub-book on Union Trust
o., shows following stub entry:

"No. 328.
Feb. 6, 1894.
O. M. Carter
Deposited R. F. Westcott. 67.25."

There is a line run through the figures 67.25 in the money
olumn indicating cancellation, and the amount is not ad-
ed in on the check stub to the amounts withdrawn from the
ank.

Westcott evidently intended to pay Carter on February 6,
94, that balance left of Carter's funds in the Union Trust
o. including the coupons in Westcott's hands deposited for
llection through the Union Trust Co., but changed his mind.
he full adjustment was made later as we shall see (*post*, p.
5).

DIVISION NO. 16 (MARCH 5, 1894). EXHIBIT 319. Vol 30

Carter in New York and Makes False Report of Whereabouts.

That Carter was in New York on March 5, 1894, is shown by a deposit ticket in his own handwriting, Exhibit 251/ Carter admits this, and that he did not state his absence from his station in his monthly report to the Chief of Engineers (Wyman Vol. 3), p. 1159.

Deposit of Disbursing Check.

Deposit in American Exchange National Bank, Exhibit 240. Vol. 31

1894.

March 5, Deposit to credit of B. D. Greene		$24,075.00
Less allowance trip Carter to N. Y.		75.00
Amount for division		$24,000.00
One-third of which is		8,000.00

Contemporaneous Checks.

Check B. D. Greene on American Exchange National Bank, cashed Mar. 5, 1894, Exhibit 242	$8,075.00
Check B. D. Greene on American Exchange National Bank, deposited in account W. T. Gaynor, American Exchange National Bank, March 5, 1894, Exhibits 242, 247	8,000.00

Distribution.

Deposit credit of B. D. Greene as above		$24,075.00
Check of Greene deposited credit of W. T. Gaynor,	$8,000.00	
Check cashed by Greene	8,075.00	16,075.00
Left in Greene's hands		$ 8,000.00

POOR CO

Contemporaneous Deposits.

1894.
March 5, Deposit, Exhibit 256., by O. M. Carter, for credit of R. F. Westcott in Union Trust Co., bills..$5,000.00
March 5, Deposit Exhibit 251, by O. M. Carter for his personal credit in Union Trust Co. bills 2,400.00

INVESTMENTS.

Tow-boat Stock.

March 10, 1894. Purchased by O. M. Carter, 20 shares stock of Savannah Towboat Co.....$2,000.00
(Exhibit 449, Wyman) and Testimony of Jacob Paulsen, (Court Martial Vol. 6) p. 1377, John F. Paulsen, Exhibit 449 (Wyman).
Paid for:
By check R. F. Westcott No. 378, dated March 6, 1894, on Union Trust Co. favor O. M. Carter, for..$2,000.00
Carter produced the original check before the Examiner Jan. 17, 1905, and stated that he got it back from R. E. Westcott in summer of 1899.
He admits that this check was used to buy the Towboat stock and claims it was a present from R. F. Westcott (Wyman Vol. 2), p. 59 and 219.

Savannah Brewing Co. Stock.

June 1, 1894. Bought by O. M. Carter, 12 shares stock of Savannah Brewing Co. Transferred to Carter, Carter, Certificate No. 431, in Carter's name in hands of Receiver.....$960.00
Paid for:
Check R. F. Westcott favor of O. M. Carter, dated May 25, 1894, for coupons received from Carter and collected by R. F. Westcott. (see *ante*, p. 682).
Carter claims that this check was a present from Westcott (*ante*, p. 683) and Defendant's Exhibit 96-D, p. 26.

St. Louis & Iron Mountain.

Purchased in account of R. F. Westcott with C. H. Van Deventer, Exhibit 232: Vol 31

1894.

March 16, 3M—St. Louis & Iron Mt. 1st 5's		$3,078.75
Paid for out of-following deposits:		
Mar. 10, Deposit with Van Deventer, coupons on 10 Del. & Hudson, Exhibit 435 Vol 28	$ 350.00	
Mar. 17, Check R. F. Westcott on Union Trust Co. for Van Deventer, Exhibit 441, 435. Vol 28	3,000.00	
	$3,350.00	

5M—*Wabash 1st Mtge. 5's* see Division No. 14 (*ante*, p 680).

COLLECTION OF DIVIDENDS & COUPONS.

Certificate No. 235 for the Towboat stock is in Carter's name, and is in hands of Receiver in this cause, all dividends were collected by Carter, Exhibit 449 (Wyman). Vol 29

On Brewing Company.

The dividends on the Savannah Brewing Co. stock were all collected by Carter, Exhibit 321. Vol 29

On St. Louis & Iron Mountain Bonds.

Collection of coupons on these 3M—St. L. & I. Mt. bonds were made precisely as on the 2 M—bonds of same kind bought in Division No. 14 (see *ante*, p. 677).

The 3 M—St. L. & Iron Mt. bonds together with the 2M—bought in Division No. 14, were sold on April 19, 1897, by R. F. Westcott through Reed & Flagg, and the proceeds applied to the Orange, N. J. investment (*post*, p. 787).

The Towboat stock is in the hands of the Receiver in this cause. Also the Brewery Co. stock.

ADJUSTMENT BETWEEN WESTCOTT AND CARTER.

Settlement Feb. 5, 1894, to March 16, 1894.

1894.		Disbursements.	Receipts.
Feb. 5,	Deposit, Exhibit 232, in a/c of R. F. Westcott with C. H. Van Deventer, bills		$10,000.00
Feb. 6,	Deposit, Exhibit 256, in a/c of R. F. Westcott with Union Trust Co., Bills		8,000.00
Feb. 6 & 8	Deposit, Exh. 444 & 320, coupons:		
	10 Chi. & N. W.....$175		
	10 Mil. & St. Paul..... 400		
	2 Iron Mountain..... 50		
	5 N. J. Junction..... 100		
	——		725.00
	Securities purchased in a/c of R. F. Westcott with C. H. Van Deventer, Exhibit 232:		
Feb. 6,	5 M—Lake Shore & M. S. 2nds 7's	$6,206.25	
Feb. 6,	2 M—N. Y. Central 1st 7's....	2,500.00	
Feb. 15,	6 M—N. Y. Central 1st 7's....	7,492.50	
Feb. 16,	2 M—N. Y. Central 1st 7's...	$2,497.50	
March 5,	Deposit, Exhibit 256, by Carter in a/c R. F. Westcott with Union Trust Co., N. Y. Ticket in Carter's handwriting, bills		5,000.00
March 10,	Credit in a/c R. F. Westcott C. H. Van Deventer, D. & H. Coupons, Exhibit 436-435		350.00
March 10,	R. F. Westcott check favor O. M. Carter, used to buy Towboat stock, Exhibit 441 and Def. 62	2,000.00	
March 16,	Bought in account of R. F. Westcott with C. H. Van Deventer, 3M St. Louis & I. Mtn. 5's	3,078.75	
		$23,775.00	$24,075.00
	Balance due O. M. Carter.	300.00	

Confirmation.

See Exhibit 568, Wyman. Copied Vol. 11 P. 5136

Photo. of leaf of Westcott's stub check book, furnished the Attorney-General by Carter:

"No. 402 1894

Mch 27 292.50

O. M. Carter 300. "

The "300" is cancelled and not added into the addition of the money column.

Also the check for $292.50 was not paid as shown by the bank account and the amount $292.50 added back to the bank balance opposite check stub No. 434.

*

Completed Settlement.

That the above balance due from Westcott to Carter was subsequently adjusted between them by a cash payment or by some transactions not appearing on the bank account in evidence is indicated by the fact that the transactions which subsequently took place between them were settled, without reference to the above balance.

Subsequent Adjustment.

1894.	Receipts.	
March 24,	Exhibit 65, Check No. 318, O. M. Carter on Union Trust Co. favor M. H. Westcott paid Apr. 3, 1894	$100.00
Apr. 6,	Credit of coupons on 30 Long Docks in a/c R. F. Westcott in Union Trust Co. Exhibit 444 & 320	900.00
		$1,000.00

Disbursements.

Apr. 5.	Deposit R. F. Westcott to Carter's credit in Union Trust Co., Exhibit 65, 251 & 255	$1,000.00

P. 696. Note

*The original canceled check for $292.50 is in evidence and Carter admi he had endorsed it. (Vol. 13, p. 6036.) The original of the photograph the check stub leaf from Westcott's stub book were furnished by Carter to t Atty. Genl. in 1899, before the Government came in contact with Westco The leaf shows that Westcott added the $292.50 back to the deposit side aft he canceled the check, as he did in other instances where checks were ca celed.

Confirmation.

On Westcott's check stub book Exhibit 561, is written:

"No. 440
April 5th 1894
O. M. Carter $1,000
Exchange "

DEFENDANT'S EXHIBIT 96-D. Vol. 20

Fictitious Entries.

Vol 20 P9572-3

Carter tries to explain Exhibit 96-D, pp. 24 and 25, this $1,000 transaction by Diary entries as follows:

1894			
Apr. 4,	Westcott makes a present to Carter of coupons from bonds which Carter designates Westcott's bonds and puts in the paper bag Vol 20 P9572-3		
	5 M—Wabash	$125.00	
	10 M—Mil. L. S. & W.....	300.00	
	10 M—Chi. & N. W.	175.00	$600.00
Apr. 4,	Carter adds coupons from what Carter calls his wife's estate bonds Vol 20 P9573		
	5 M—Wabash	$125.00	
	5 M—Chi. & E. I.	125.00	
	5 M—C. & O.	125.00	375.00
	Carter gives Westcott *cash*		25.00
			$1,000.00
Apr. 5,	Check Westcott to Carter, ~~Exhibit 65~~ Vol 20 P9573		$1,000.00

It will be noted, however, that he fails to bring into the account the check given by Carter to M. H. Westcott, March 24, for $100. Exhibit 65, which bears R. F. Westcott's endorsement, Exhibit 538. While in the previous parts of Exhibit 96-D, p. 23, in trying to reach the $171.14 settlement

check, he brings into the account the similar check No. 288, issued by Carter January 11, 1894, in favor of M. H. Westcott, for $100.

Again he ignores the credit in Westcott's account of the coupons on the 30 Long Docks, April 6, 1894, $900. The two items omitted being evidently the things for which Westcott gave Carter his check April 5, 1895, for $1,000.

Again, Carter substitutes in place of the 30 Long Dock coupons which were due April 1, 1895, as the thing "exchanged" with Westcott for his check of April 5, 1894, a lot of coupons not due until May 1, 1894, he adds in an alleged item of $25 cash to make the amount $1,000 and makes Westcott give him the $1,000 check for these un-matured coupons.

Again, instead of the coupons for which he has Westcott give him the $1,000 check on April 5, 1894, being paid for by that check, we have shown that those particular coupons were paid for by Westcott's check to Carter May 25, 1894, for $960. (See *ante*, p. 68 Oct Sq)

Why Carter Twisted These Transactions.

The necessity which Carter was under which caused him to twist these entries, in his prepared statement 96-D, was this:

(1) That the account show that Westcott whenever he did collect coupons made no distinction whatever between what Carter now calls his wife's estate bonds from the other bonds which were purchased in the Divisions, and which finally went to Carter, and not only collected them together, but accounted to Carter for the coupons on all without distinction, year in and year out, and Carter got the benefit of the coupons all right straight along.

(2) In order to destroy the appearance of a regular accounting to him for all the coupons on all the bonds whenever

Westcott collected them in a batch, Carter in fixing up his statement makes himself turn over to Westcott, those coupons from what Carter calls his wife's estate, and then makes Westcott make him a present at the time of the collection or remittance of the other coupons, from what Carter calls Westcott's bonds, or a present of a sum equal to them.

(3) This is precisely what he has done in the instance above gone over.

Another illustration of it:—

Collection by R. F. Westcott of Coupons June, 1, 1894.

1894			
June 1,	Collected by R. F. Westcott through Union Trust Co., Exhibits 320, 444: Vol 29 and 28		
	Coupons on 10 Morris & Essex	$350.00	
	Coupons on 20 L. S. & M. S.	700.00	
	Coupons on 10 Chi. St. P. M. & O.	300.00	$1,350.00
June 15,	Check No. 581, R. F. Westcott favor of O. M. Carter on Union Trust Co., Exhibits 255 and 65 Vol 31		1,350.00

How Carter Has This Entered on Exhibit 96-D, p. 26. Vol 20 p 9574

June 1,	Collected by R. F. Westcott through Union Trust Co., coupons belonging to Carter,		
	Coupons on 10 Morris & Essex	$350.00	
	Coupons on 10 Chi. St. P. M. & O.	300.00	$650.00
June 15,	Check No. 581, R. F. Westcott, favor Carter	$1,350.00	
	Present to Carter	700.00	650.00

Confirmation by Westcott's Stub Book.

Westcott's check stub book Exhibit 561, as delivered by Mr. R. F. Westcott to Mr. Johnson at the Commissioner's hearing in New York in 1900, and as identified and introduced by Mr. Johnson on January 22, 1904, before the Examiner (Wyman) had a stub sheet represented by checks No. 554, 555 and 556, torn out and missing.

This missing stub book was produced from the custody of Captain Carter on October 5, 1906, and put in evidence as Defendant's Exhibit 106 (Wyman Vol. 3), p. 1377.

Captain Carter explained his custody of it by saying that he got it out of Westcott's check stub book at the time in 1899 they, the stub books, were in R. E. Westcott's custody while R. F. Westcott was in Europe, and the other stubs were torn out to send to the Attorney General (Wyman Vol. 3) pp. 1376-7.

There can be no question therefore as to the fact that the entries on this stub in Mr. Westcott's handwriting were made long prior to Mr. Westcott's becoming a witness for the Government.

On this stub sheet appears:

"No. 554,
June 1st, 1894,
O. M. Carter
Coupons $1350.00"

Written across the stub are the words:

"See check 580"

On the check stub sheet which contains the entry of checks 580-581-582 in his stub book, is entered check 581, June 15 1894, for the $1350 check which was actually deposited to Carter's credit in the Union Trust Company and across the stub is written:

"Instead of check 584."

The original cancelled check No. 554 was found among Mr. Westcott's papers after his death and is in evidence (Exhibit 612 Wyman). Vol. 13 P 6053

What grounds is there for Carter to divide this $1350 check for "coupons" into an alleged gift of $700 and $650 for coupons?

DIVISION NO. 17. JULY 9, 1894. EXHIBIT 319. Vol. 3

Carter Not in New York July 9, 1894.

Carter admits this (Wyman Vol. 3), p. 1200. Vol 13 Pg 258

Loan on Notes of W. T. Gaynor.

It appears that here were certain loans obtained in 189 from the American Exchange National Bank, New York, fo which notes in the name of W. T. Gaynor were given, th proceeds of which, nearly all of them, were transferred fro the American Exchange National Bank, New York, to th accounts in the Savannah banks from which the disbursement were made to carry on the work.

31 Exhibit 249 shows these notes to have been as follows:

Note dated Apr. 5, 1894,.....	$24,000.00
Note dated May 5, 1894,.....	26,000.00
Note dated June 5, 1894,.....	31,000.00
Interest	146.39
	$81,146.39

These proceeds were transferred to the Savannah bank by checks of W. T. Gaynor drawn on the American Exchang National Bank and deposited in Southern Bank of the Stat of Georgia, Savannah, Georgia, as follows:

Apr. 2, 1894, credit account W. T. Gaynor.....	$24,000.0
May 1, 1894, credit account E. H. Gaynor, Treas....	5,000.0
May 11, 1894, credit account W. T. Gaynor.....	19,000.0
June 2, 1894, credit account W. T. Gaynor.....	15,000.0
June 9, 1894, credit account W. T. Gaynor.....	15,250.0
	$78,750.0

As soon as Carter's disbursing checks were deposited o July 9, 1894, these notes were paid off out of their pro ceeds before a division was made, as will now appear.

Loan Notes in Name of W. T. Gaynor Paid.

Exh 249 Vol 31

1894			
	Loan on notes W. T. Gaynor and interest as above		$81,146.39
July 9,	Disbursing check No. 269218 of O. M. Carter collected by American Exchange National Bank and applied to loan as shown by Exhibit 249 Vol 31.	$80,000.00	
July 9,	Check B. D. Greene on American Exchange National Bank Exh 242 Vol 31	1,146.39	81,146.39

Deposit of Disbursing Checks for Division.

1894			
July 9,	Deposit of Carter's disbursing check No. 269217 to credit of B. D. Greene, in American Exchange National Bank, Exhibit 240 Vol 31		$90,000.00
	Less check of B. D. Greene paid on loan July 9, 1894, as above.....		1,146.39
	Amount for division		$88,853.61
	One-third of which is		29,617.87

Contemporaneous Checks.

1894.			
July 9,	Check B. D. Greene on American Exchange National Bank, deposited credit of J. F. Gaynor in American Exchange National Bank, Exhibits 242-244. Vol 31		$29,617.87
July 9,	Check of B. D. Greene cashed Exh 242 Vol 31		30,000.00

FOR DEPOSITS OF CURRENCY, SEE DIVISION NO. 20. Page 718.

Balance of third not accounted for in this Division $29,617.87

P. 703. Note

*The same result may be reached by stating it this way:

July 9, 1894. Disbursing check No. 269,218	$80,000.00
July 9, 1894. Disbursing check No. 269,217	90,000.00
	$170,000.00
Less notes paid as above	81,146.39
Amount for division July 9, 1894	$88,853.61
One-third of which is	$29,617.87

COLLECTION OF COUPONS JULY AND AUGUST, 1894.

There was deposited to credit of O. M. Carter's individual account in the Union Trust Company, all the coupons which matured in July and August, 1894, on all the bonds on hand which were purchased in all the preceding Divisions, as follows:

Deposited to Carter's credit, Exhibit 251. Vol. 31

1894	July, 1894, coupons.	
Aug. 6,	Coupons on 5 Wabash, Detroit & Chi.....	$125.00
Aug. 6,	Coupons on 10 Chicago, Mil. & St. Paul....	350.00
Aug. 6,	Coupons on 25 N. Y. Lack. & W. 6%.....	750.00
Aug. 7,	Coupons on 15 N. Y. Central	525.00
	August, 1894, Coupons.	
Aug. 7,	Coupons on 5 N. J. Junc.	100.00
Aug. 6,	Coupons on 10 Chi. & N. W.	175.00
Aug. 6,	Coupons on 10 Mil. & St. Paul.....	400.00
Aug. 6,	Coupons on 5 St. L. & I. Mt.....	125.00
		$2,550.00

How Carter Enters This on Defendant's Exhibit 96-D, Vol. 20, pages 26 and 27.

Fictitious Entries.

Carter enters all the above collections of coupons on Exhibit 96-D as made by him, with the exception of the 5 Wabash, Detroit and Chicago coupons which he does not enter at all. But those he does enter he enters as collections of coupons from "Mr. Westcott's bonds," in the column of "gifts" to wit:

	Gift.	Westcott Cr.
Collection by Carter of what he calls Westcott's coupons	$1,800.00	0.00
Collection by Carter of what he calls Westcott's coupons, $625..	250.00	$375.00

Why Carter Only Credits Westcott $375.

The Government has shown by Exhibits 444 and 320, that Vol 28 Vol 29 he following collections of coupons were made by R. F. Westcott, to wit:

1894
Nov. 22, Collection by R. F. Westcott:

Coupons from 10 Wabash 1st.....	$250.00
Coupons from 5 Chi. & E. Ill.....	125.00
Coupons from 5 C. & O.....	125.00
Coupons from 10 Chi. & N. W.....	175.00
Coupons from 10 Mil. L. S. & W.....	300.00
Coupons from 35 U. S. 5's.....	437.50

It is also shown by the Government that Westcott accounted to Carter for all of these collections (*post*, p. 729 et seq.)

As Carter is claiming that of the above,

5 Wabash 1st bonds (coupons due Nov. 1)..	$125.00
5 Chi. & E. Ill. bonds (coupons due Nov. 1).	125.00
5 C. & O. bonds (coupons due Nov. 1).....	125.00
	$375.00

were from Carter's wife's estate, he had to give some reason for Westcott's having those particular coupons, and offsets their collection by Westcott, by giving Westcott credit for $375 back on August 7, 1894.

There is no documentary evidence whatever to sustain this twisting of the transactions except Carter's pencil memoranda on the back of the Robbin's letter. Defendant's Exhibit 64 (*ante*, p. 598).

P. 705. Note

*Carter claims he was in New York July 15, 1894, and returned to Savannah July 19, 1894, having spent two days in Richfield Springs. (Vol. 19, p. 9109.) No investments were made in July, 1894. Carter claims he was in New York Aug. 3, 1894, with W. That he left on Aug. 6, 1894, for an extended trip through the lakes and to Yellowstone Park, and reached Savannah on Aug. 29, 1894, on his return. (Vol. 19, p. 9111, 12–13.) No investments were made in Aug., 1894.

DIVISION NO. 18 (SEPTEMBER 10, 1894) EXHIBIT 319.

Carter in New York September 10, 1894.

Carter was in New York September 10, 1894. Exhibit 310-311. This time he reported his absence as on duty (Wyman Vol. 3), p. 1202.

Deposit of Disbursing Checks.

Deposit in American Exchange National Bank, Exhibit 240:

1894			
Sept. 10,	Deposit to Credit of B. D. Greene		$160,683.74
	Deposit in Syracuse Banks, Exhibit 225:		
Sept.	Deposit in Commercial Bank, Syracuse, N. Y.	$89,145.40	
	Deposit in Trust & Deposit Co. of Onandago, Syracuse, N. Y.	58,735.11	147,880.51
Sept. 10,	Paid in cash over the counter by Asst. Treasurer of U. S., New York, Exhibit 249-225.		152,510.75
			$461,075.00

Less following checks credited by Southern Bank State of Georgia, Savannah, Georgia, to account Wm. T. Gaynor:

1894	Description of checks.		
Aug. 11,	B. D. Greene on Am. Ex. Nat. Bank, Ex. 214, 242, paid Aug. 13 . Vol. 31.	$5,000.00	
Aug. 17,	B. D. Greene on Am. Ex. Nat. Bank, paid Aug. 20, Exhibit 214, 242 Vol. 31.	10,000.00	
Aug. 17,	J. F. Gaynor, on Am. Ex. Nat. Bank, Exhibit 214, 245, paid Aug. 20, 1894 Vol. 31.	9,850.00	
Sept. 1,	B. D. Greene, on Am. Ex. Nat. Bank, Exhibits 214, 242, paid Sept. 4, 1894 Vol. 31.	5,000.00	
Sept. 15,	B. D. Greene on Am. Ex. Nat. Bank, Exhibits 213, 242, paid Sept. 17th . Vol. 31.	5,000.00	$34,850.00
			$426,225.00
	Less allowance trip Carter to New York		75.00
	Amount for Division		$426,150.00
	One-third of which is		142,050.00

Contemporaneous Checks Cashed.

1894		
Sept. 10,	Carters' disbursing checks cashed over the counter by Sub-Treasury as above	$152,510.75

Contemporaneous Deposits.

1894		
Sept. 11,	Deposit credit of R. F. Westcott with Reed & Flagg, Exhibit 239, currency and specie . Vol. 31.	$53,022.78
Sept. 11,	Deposit credit of R. F. Westcott with Union Trust Co. Exhibit 256, bills Vol. 31.	50,000.00
		$103,022.78

. 707. Note
n Sep. 10, 1894, Carter paid a bill of Tiffany & Co., N. Y., evidently by cash, since his stub shows no check for it (Vol. 11, p. 5304, and see Vol. 13, p. 6068) $526.65

For Balance of Deposit See Division 20, Post. 718

Balance of third not deposited in this Division $39,102.22

INVESTMENTS.

Purchased in account of R. F. Westcott with Reed & Flagg, Exhibit 239:

1894

Sept. 11, 20 M—N. Y., Lackawanna & Western Cons. 5's $22,900.00
Sept. 11, 6 M—United New Jersey 1944 4's 6,480.00
Sept. 11, 10 M—U. S. Coupon 1907 4's..... 11,550.00
Sept. 11, 10 M—U. S. Coupon 1904 5's..... 11,975.00

$52,905.00

Vol 31

Paid for, Exhibit 239, by:

1894

Sept. 11, Currency and specie deposit as above..$53,022.78
Less interest charged 117.78

$52,905.00

COLLECTION OF COUPONS.

New York, Lackawanna & Western Cons. 5's.

The coupons on these 20 M—N. Y. Lack. & W. Cons. 5's bonds, were collected by R. F. Westcott through the Union Trust Co., February 1, 1895. Exhibits 444 and 320. Vol 28 Vol 29

These collections were accounted for by R. F. Westcott to Carter as we shall see later. Post. 817

The coupons on these 20 M—N. Y. Lack. & Western Cons. 5's bonds, were deposited in 1895 while R. F. Westcott was in Europe in the R. F. Westcott, O. M. Carter, Attorney, account, and Carter withdrew and spent the money. Exhibit 589. Vol. 29

The coupons on these 20 M—N. Y. Lack. & W. Cons. 5's bonds, were deposited to credit of Carter's individual account in the Union Trust Co. on following dates: Exh. 51 Vol.

February 1, 1896; August 17, 1896; March 6, 1897, August 3, 1897; Exhibit 251.

United New Jersey 1944-4 *Per Cent. Bonds.*

Coupons on the 6M—United New Jersey 1944—4's along with the coupons for 4 M—of same bought October 9, 1894, in Division 19, and from 10 M—bought March 25, 1895, in Division 24 (*post,* p. 738) were deposited in 1895, while R. F. Westcott was in Europe in the R. F. Westcott, O. M. Carter, Attorney, account and Carter withdrew and spent the money. Exhibit 589. Vol 29

Coupons on same were deposited to Carter's individual credit in Union Trust Co., per Exhibit 251. Vol. 31

March 2, 1896; October 8, 1896; March 6, 1897.

United States 1907 4's *Bonds.*

The coupons on these U. S. 1907 4's bonds maturing October 1894, and January 1895, were collected by R. F. Westcott and accounted for by him to Carter as we shall see (*post,* p. 729 et seq.)

United States 1904—5's *Bonds.*

The coupons on these U. S. 1904 5's bonds maturing November, 1894 and February, 1895, were collected it appears, by R. F. Westcott and accounted for by him to Carter (*post,* p. 729 et seq.)

FINAL DISPOSITION.

The 20 M—N. Y. Lack. & W. Cons. 5's and the 6 M—United New Jersey 1944—4's (together with 14 additional purchased subsequently are included in final receipt of October 29, 1897. Exhibit 272 Vol 24 11275-6

The 20 M—N. Y. Lack & W. Cons. 5's, were sold as follows:

10 M—sold May 29, 1900, by Frank P. Blair, through A. O. Slaughter & Co., Chicago, Illinois. Exhibit 7 (Booth).

10 M—sold September 12, 1900, by L. D. Carter, through J. F. Harris, Chicago, Illinois. Exhibit 9 (Booth).

The United New Jersey were sold by J. H. Paul, acting as agent for O. M. Carter, April 3, 1900, through Tracy & Co., New York. Exhibit 403. (Parsons.)

The 10 M—U. S. Coupon 1907, 4's, and the 10M—U. S. Coupon 1904 5's, were sold by O. M. Carter March 6, 1895, while Westcott was in Europe, in a/c R. F. Westcott with Reed & Flagg and proceeds reinvested March 6 and 25, 1895. See Division 24.

DIVISION NO. 19 (OCTOBER 5, 1894) EXHIBIT 319. Vol. 30

Carter in New York October 5, 1894, Makes False Report of Whereabouts.

Carter was in New York October 5, 1894, as shown by Exhibits 312, 313. Carter admits this and admits that on his monthly report to the Chief of Engineers that he "started on temporary absence October 5, 1894," and returned November 5, 1894, under leave. (Wyman Vol. 3) p. 1206.

Deposit of Disbursing Checks.

Deposited in American Exchange National Bank, Exhibit 240: Vol. 31

1894.

Oct. 5,	Deposit to credit of B. D. Greene	$63,075.00
	Less allowance trip Carter to N. Y.	75.00
	Amount for division	$63,000.00
	One-third of which is	21,000.00

Contemporaneous Checks.

Check B. D. Greene on American Exchange National Bank, dated Oct. 4, 189,, cashed Oct. 5, 1894, favor unknown, Exhibit 242 Vol. 31	$ 1,000.00
Check B. D. Greene on American Exchange National Bank, cashed October 5, 1894, by B. D. Greene, Exhibit 242. Vol. 31	1,150.00
Check B. D. Greene on American Exchange National Bank cashed Oct. 5, 1894, by B. D. Greene, Exhibit 242. Vol. 31	20,000.00
Check B. D. Greene on American Exchange National Bank, deposited in account W. T. Gaynor in Am. Ex. Nat. Bank Oct. 6, 1894, Exhibit 242, 247. Vol. 31	21,000.00

Contemporaneous Deposits.

1894.
Oct. 24, Deposit to credit of R. F. Westcott in Union Trust Co. Exhibit 256, bills.....Vol. 31.....$ 4,000.00
For balance of deposits see Division No. 20.
Balance of third not deposited in this Division....$17,075.00
Post Page 719

Cause of Delay in Deposits of Currency July to October, Inclusive.

During August, September and October 1894, Carter made three extended trips, which he admitted on cross-examination (Wyman Vol. 3), p. 1214 to 1216. Vol. 13 p. 6066-8

He was in Cincinnati September 25, 1894, and returned September 28th.

He was in Yellowstone Park on August 11th, 1894, and returned to Savannah August 29th.

He was in Savannah, October 3, 1894.
New York, October 5, 1894.
Montreal, October 7, 1894.
Winnepeg, October 9, 1894.
San Francisco, October 18, 1894.
Los Angeles, October 27, 1894.
Savannah, November 4, 1894.

This is sufficient to account for the bulk of his thirds remaining during this period in the safety box kept in the joint names of O. M. Carter and R. F. Westcott.

P. 712. Note
*On Oct. 5, 1894, Carter paid Tiffany & Co., N. Y., cash, for which there is no check on stub, the source of which he does not attempt to account for (Vol. 13, p. 6068) $ 500.00
On July 27, 1894, Tiffany & Co. cash 200.00
On Aug. 6, 1894, Haas Bros. cash 102.75
On Sep. 10, 1894, Tiffany & Co. cash 526.62
On Oct. 19, 1894, Kim Lung & Co. cash 77.55
$1,406.93

(Vol. 13, p. 6068.)
Carter was unable to account for the source from which he received this currency. (Vol. 13, pp. 6070-71.) Nor are there any withdrawals from his bank accounts to account for the source of the large expenditures which he must have made for traveling expenses on the above trips. (Vol. 13, p. 6070.)
This is sufficient to account for the fact that Carter did not always deposit the full amount of his third, for investment.

INVESTMENTS.

Purchased in account of R. F. Westcott with Reed & Flagg, Exhibit 239. Vol 31

1894.

Oct. 9, 4 M—United New Jersey 1944 4's	$ 4,340.00
Oct. 9, 5 M—Joliet & North Indiana 7's	6,352.50
Oct. 9, 3 M—Morris & Essex 4-1/2's	3,195.00
Oct. 9, 25 M—United States Coupon 1904 5's	29,875.00
	$43,772.50

Paid for by:

1894.

Oct. 9, Check R. F. Westcott on Union Trust Co., Exhibit 239, 256. Vol 31	$43,911.42	
Oct. 9, Currency	10.00	
	$43,921.42	
Less interest charges	148.92	$43,772.50

Investment First Payments on 8th Avenue New York Property.

1894.

Oct. 24, Payment on account of purchase of property 286-8th avenue, New York.....$4,004.50

Paid for by:

Check R. F. Westcott Oct. 24, 1894 favor R. V. Harnett & Co. on Union Trust Co. Exhibits 255-275. Vol 31 $4,004.50

See affidavit of J. F. Bragg, Exhibit 421 (Parsons) Vol 28

See Deed R. F. Westcott and wife to O. M. Carter dated Jan. 17, 1895. Exhibit 276. Copied Vol 24 f. 1282

COLLECTION OF COUPONS.

The United New Jersey 1944 4's.

The coupons on these 4 United New Jersey 1944 4 per cent. were collected as stated in Division 18 (see *ante*, p. 709).

The Joliet & North Indiana 7's.

The coupons on these 5 M—Joliet & North Indiana 7's wer collected in account of R. F. Westcott as follows:

January 21, 1895; and January 11, 1897; through Unio Trust Co. Exhibits 444 and 320, and accounted for by Wes cott to Carter as we shall see later (*post*, p. 730 et seq & 79 et seq.)

The coupons maturing July 1895, while Westcott was i Europe, were deposited in the R. F. Westcott, O. M. Carte Attorney, account and the money was drawn out and spen by Carter, Exhibit 589.

The coupons on same were deposited by O. M. Carter to th credit of his individual account as shown by Exhibit 25 January 10, 1896, July 20, 1896, and July 13, 1897.

Morris & Essex 4-1/2 *Per Cent. Bonds.*

The coupons on the 3 M—Morris & Essex 4-1/2's, wer collected in account of R. F. Westcott as follows:

January 21, 1895 and January 4, 1897, through Union Tru Co. Exhibit 444 and 320 and accounted for by Westcott t Carter as we shall see (*post* p. 730 et seq & 791 et seq.)

The coupons maturing July, 1895, while Westcott was i Europe, were deposited in the R. F. Westcott, O. M. Carte Attorney, account, and the money was drawn out and spen by Carter. Exhibit 589.

The coupons on same were deposited by O. M. Carter t the credit of his individual account as shown by Exhibit 25 January 3, 1896; July 20, 1896 and July 2, 1897.

United States Coupon 1904 5's.

The coupons on 25 were collected in account of R. F. Wes cott, November 1894, and February 1, 1895, and on 5 of sam February, 1897, and on 4 of same May, 1897, and accounte for by Westcott to Carter as we shall see (*post*, p. 729 et & 791 et seq.)

The coupons on 5 of same were deposited by O. M. Catrer while Westcott was in Europe, in account of R. F. Westcott, O. M. Carter, attorney, for May, 1895, August, 1895, November, 1895, and the money was drawn out and spent by Carter, Exhibit 589. Vol. 29

The coupons on 5 of some were deposited by O. M. Carter to the credit of his individual account as shown by Exhibit 251, February 10, 1896, May 13, 1896, August 17, 1896, November 2, 1896, and on 4 of same, August 3, 1897. Vol 23

FINAL DISPOSITION.

United New Jerseys.

The United New Jersey 1944, 4 per cent. bonds are included in final receipt of October 29, 1897, and were subsequently sold by J. H. Paul, acting as agent for O. M. Carter, on April 9, 1900, through Tracy & Co., brokers, New York, Exhibit 403 (Parsons). Vol. 28

Joliet & North Indiana.

The Joliet & North Indiana 7 per cent. bonds are included in final receipt of October 11, 1897, and were subsequently sold by F. P. Blair, the Attorney for O. M. Carter, on October 15, 1900, through Knight, Donnelley & Co. Brokers, Chicago, Illinois. Exhibit 10 (Booth). Vol 10 94924 30

Morris & Essex.

The Morris & Essex 4-1/2 per cent. bonds are included in final receipt October 29, 1897, and were subsequently sold by J. H. Paul, acting as agent for O. M. Carter, on May 18, 1898, through Kerr & Co. Brokers, New York. Exhibit 401 (Parsons). Vol. 28

U. S. Coupon Bonds.

20 M—of the United States coupon 1904, 5 per cent. were sold March 6, 1895, by O. M. Carter in a/c of R. F. Westcott, while Westcott was in Europe, and proceeds reinvested March 6 and 25, 1895. See Division 24. Post 737

1 M—of the United States coupon 1904 5 per cent. bonds were sold April 24, 1897, and proceeds reinvested in Orange N. J. Property. See Division 31 (*post*, p.).

4 M—of the United States coupon 1904, 5 per cent. bonds were sold by J. H. Paul, acting as agent for O. M. Carter on June 17, 1898, through Kerr & Co. brokers, New York. Exhibit 401 (Parsons). Vol. 28

DIVISION NO. 20 (NOVEMBER 12, 1894) EXHIBIT 319. Vol. 30

Carter in New York November 12, 1894.

That Carter was in New York on November 12, 1894, appears from Exhibit 314. Carter admits this, and admits that he left Savannah November 10th, but that in his monthly report to the Chief of Engineers, he reported his absence from Savannah as from November 12, 1894, on leave (Wyman Vol. 3), p. 1221.

Deposits of Disbursing Checks.

The following deposits were made in the American Exchange National Bank, New York:

1894.
Nov. 12, Exhibit 240, Deposit of O. M. Carter's disbursing checks to credit B. D. Greene.....$20,075.00
Nov. 12, Exhibit 243, Deposit of O. M. Carter's disbursing check to credit of J. F. Gaynor..... 10,000.00

$30,075.00
Allowance Carter's trip to New York..... 75.00

Amount for division.....$30,000.00
One-third of which is..... 10,000.00

Contemporaneous Check.

Check B. D. Greene on American Exchange National Bank, *cashed* Exhibit 242, Nov. 12, 1894.....$10,000.00

Contemporaneous Deposits.

1894.

Nov. 26 & 27, Deposit, Exhibit 426, by R. F. Westcott with Title Guarantee & Trust Co. N. Y. account 8th Avenue property purchase currency..$35,550.00

Transferred to J. F. Bragg, Executor of estate of Bruce by check of Title Guarantee & Trust Co. R. F. Westcott, endorsed by Bragg for $35,550. Exhibit 426 (Parsons).

Testimony of J. F. Bragg Exhibit 421 (Parsons). See Deed R. F. Westcott and wife to O. M. Carter, Jan. 17 1895, withheld from Record until June 21, 1897, Exhibit 276.

Dec. 4, Deposit, Exhibit 239, in account R. F. Westcott with Reed & Flagg, currency.....$53,000.00

INVESTMENTS.

Eighth Avenue Property.

1894

Nov. 27, purchase of 8th avenue property, Final payment as above..... $35,550.00

Cost of 8th avenue property:

Paid Oct. 24, 1894, advance deposit made by R. F. Westcott's check to Auctioneers, see Division No. 19.....$ 4,004.50

Paid Nov. 26, 1894, check R. F. Westcott to Title Guarantee & Trust Co. for examining title, Exhibit 255..... 259.25

Paid Nov. 26 and 27, currency deposit as above..... 35,550.00

Total cost 8th avenue poperty....$39,813.75

P. 718. Note

*R. F. Westcott testified that when he bid on the 8th avenue property, he intended it for himself, but that, "He (Carter) wanted it and I let him have it." (Vol. 24, p. 11815.)

That he let Carter have it just exactly at the same price at which he got it. (Vol. 24, p. 11281.)

Westcott testified (Vol. 24, pp. 11297-8), that on one occasion in the fall of 1894, Carter handed him $100,000 in money to take care of for him, saying that he had to go to Savannah. That he (Westcott) put it in his Westcott's box. (Vol. 24, p. 11530.) That he disposed of it as Carter directed, gave it back to Carter in one way or another, just how he did not recollect. (Vol. 24, p. 11298.) The deed from Westcott to Carter is dated Jan. 7, 1895, but acknowledged Jany. 17, 1895. (Exhibit 276, Vol. 24, p. 11282.) For subsequent history of 8th avenue property, see *post*, pp. 794–796.

Bond Purchases.

Purchased in account of R. F. Westcott with Reed & Flagg, Exhibit 239: Vol. 3/

1894

Dec. 4, 45 M—United States Coupon bonds, 5's 1904 ..... $53,775.00

Paid for by:

Dec. 4, Currency deposit as above....$53,000.00

Dec. 4, Check No. 824, R. F. Westcott on Union Trust Co., Exhibit 238, 255 Vol 3/ 775.00

$53,775.00

Deposits Previously Unaccounted For.

July 9, 1894, Division No. 17. Ante P. 702.... $29,617.87

Sept. 18, 1894, Division No. 18. Ante P. 708.... 39,102.22

Oct. 5, 1894, Division No. 19... Ante P. 712.... 17,075.00

Nov. 12, 1894, Division No. 20..... Ante P. 717.... 10,075.00

$95,870.00

Now Accounted For.

Deposits of currency now accounted for.....$88,550.00

COLLECTION OF COUPONS AND RENTS.

Coupons.

The coupons on such of these bonds as were on hand coupon periods (some of them having been sold from time to time as referred to under the head of Final Disposition) were deposited to credit of O. M. Carter's individual account in the Union Trust Company, per Exhibit 251, Vol 3/ as follows:

February 10, 1896; May 13, 1896; August 17, 1896; November 2, 1896; August 3, 1897.

While Westcott was in Europe in 1895, the coupons were deposited in the R. F. Westcott, O. M. Carter, Attorney, account and the money withdrawn and spent by Carter, Exhibit 589. Vol 2

Feb. 1, 1895. The coupons on these U. S. bonds were credited in account of R. F. Westcott with the Union Trust Co., and were accounted to by Westcott to Carter (see *post*, p. 730-731).

Feb,. 1897. Coupons from 15 U. S. bonds were collected by Westcott and accounted for to Carter (see *post*, p. 792).

May, 1897. Coupons from 12 U. S. bonds were collected by Westcott and accounted for to Carter (see *post*, p. 792).

Rents Eighth Avenue Property.

Rents on the 8th avenue property were collected by R. F Westcott through J. F. Bragg, as follows:

Dec. 13, 1894, Check J. F. Bragg, deposited credit of Westcott in Union Trust Co. Exhibits 441, 420. Vol. 28 ..... $247.67

Jan. 14, 1895, Check J. F. Bragg, deposited credit of Westcott in Union Trust Co., Exhibits 441 and 420. Vol. 28 ..... 245.00

The above collections were accounted for by Westcott to Carter (see *post*, p. 731-2).

Rents on the 8th avenue property during the time Westcott was in Europe in 1895, were delivered by J. F. Bragg to J. B. Solley, the father of Dr. Fred P. Solley, and by him deposited in the R. F. Westcott, O. M. Carter, Attorney, account, and reported to Carter, who withdrew and spent the money. Exhibit 589. Vol. 28

From January 1, 1896, on, all the rents were remitted by Bragg directly to Carter, and have gone to Carter or to his agents ever since. See Exhibit 589. Vol. 29 - 420 (Carson and Exhibit 4 (Booth) Vol. 10 P 4093

FINAL DISPOSITION.

The Eighth Avenue Property.

The 8th avenue property is tied up in the hands of receiver in New York, in *U. S.* v. *O. M. Carter et al.* Vol. 19 P 9349

10 M of these U. S. bonds sold November 16, 1896, in account of R. F. Westcott with Reed & Flagg, Exhibit 239, for $11,218.75, and proceeds applied to advances to Greene during execution of 1896 contract work (*post*, p. 791).

20 M of these U. S. bonds sold Dec. 1, 1896, in account R. F. Westcott, with Reed & Flagg, Exhibit 239, for $22,662.50, and proceeds applied to re-investments. See G. Division No. 31 (*post*, p. 756). Reed & Flagg's check for $22662.50 was deposited to credit of R. F. Westcott in Union Trust Co. & 239 & 256.

3 M of these U. S. bonds sold April 21, 1897, in account R. F. Westcott with Reed & Flagg for $3,423.75, and proceeds applied to Orange, N. J., investment (see *post*, p. 757).

12 M of these U. S. bonds are included in receipt of October 11, 1897, Carter to Westcott, Exhibit 269. Vol 24 p 11261

These 12 M—U. S. bonds were sold October 12, 1897, in lot of 13 M, by A. W. Kilbourne & Co., brokers, for account of L. L. Kellogg, of the firm of Kellogg & Rose, who were Carter's attorneys, for $14,990.62. Exhibit 417 (Parsons). Vol 21

P. 721. Note

*Statement of thirds of divisions and currency deposits brought out in Divisions 17, 18, 19 and 20:

Division 17. July 9, 1894, the third (*ante*, p. 703)		$29,617.87
Division 18. Sep. 10, 1894, the third (*ante*, p. 707)		142,050.00
Division 19. Oct. 5, 1894, the third (*ante*, p. 711)		21,000.
Division 20. Nov. 20, 1894, the third (*ante*, p. 717)		10,000.
		$202,667.87
Corresponding currency deposits:		
Sep. 11, 1894, R. F. Westcott with Reed & Flagg	$53,022.78	
Sep. 11, 1894. R. F. Westcott with U. T. Co.	50,000.	
Oct. 24, 1894. R. F. Westcott with U. T. Co.	4,000.	
Nov. 26, 27, 1894. R. F. Westcott with Title Guar. Co.	35,550.00	
Dec. 4, 1894. R. F. Westcott with Reed & Flagg	53,000.	195,572.78
Not yet accounted for to Dec. 4, 1894		$7,095.09
Less bills paid by Carter by cash (*ante*, p. 712)		1,406.95
Balance of third not brought out		5,688.14

DIVISION NO. 21 (DECEMBER 11, 1894), EXHIBIT 319.

Carter was in New York December 11, 1894, *But Makes False Report of Whereabouts.*

That Carter was in New York December 11, 1894, is shown by Exhibit 315, 316. Carter admits this, and that he failed to state his absence in his monthly report. (Wyman Vol. 3) p. 1225.

Deposit of Carter's Disbursing Checks.

1894		
Dec. 11,	Deposit to credit of B. D. Greene in American Exchange National Bank, Carter's Disbursing Checks, Exhibit 240	$24,040.00
Dec. 20,	Deposit to credit of B. D. Greene in American Exchange National Bank, Carter's Disbursing Check, Exhibit 240	874.73
		$24,914.73
	Allowance trip Carter to New York	75.00
	Amount of Division	$24,839.73
	One-third of which is	8,279.91

Contemporaneous Checks.

Check B. D. Greene, dated Dec. 11, 1894, and cashed by Greene Dec. 17, 1894, drawn on American Exchange National Bank, Exhibit 242 Vol. 31 ..... $ 5,350.00

Check B. D. Greene, dated Dec. 11, 1894, drawn on American Exchange National Bank, and credited account Wm. T. Gaynor, American Exchange Nat. Bank, Dec. 19, 1894, Exhibit 242, 247 Vol 31 8,000.00

Check B. D. Greene on American Exchange National Bank, cashed by B. D. Greene, Dec. 29, 1894, Exhibit 242 Vol 31 3,000.00

Check B. D. Greene, dated Dec. 18, 1894, drawn on American Exchange Nat. Bank, credited account W. T. Gaynor, Am. Ex. Nat. Bank, Jan. 4, 1895, Exhibits, 242, 246 Vol 31 ..... 213.00

Contemporaneous Deposits of Currency.

1894

Dec. 31, Deposit Exhibit 256 Vol 31, credit R. F. Westcott with Union Trust Co., bills $1,200.00

1895

Jan. 11, Deposits, Exhibit 256 Vol 31, credit R. F. Westcott, with Union Trust Co., bills ..... $4,000.
Bills 3,000. 7,000.00

$8,200.00

INVESTMENTS.

For the investments made with above deposits, see Division No. 22 (*post*, p. 725).

P. 723. Note

**Balance of Thirds Not Yet Deposited.*

Balance not brought out to Dec. 4, 1894 (*ante*, p. 721)		$5,688.14
Division 21, third		8,279.91
		$13,968.05
Dec. 31, 1894. Currency deposit	$1,200.	
Jany. 11, 1895. Currency deposit	7,000.	8,200.00
Jany. 11, 1894. Balance of thirds not yet deposited		$5,768.05

DIVISION NO. 22 (JANUARY 17, 1895) EXHIBIT 319.

Carter Was in New York January 17, 1895.

That Carter was in New York January 17, 1895, is shown by Exhibit 271. Carter admits this. He reported this absence as on leave. But he was also in New York January 1st to 9th and made no report of that absence. (Wyman Vol. 3), p. 1228.

Deposit of Carter's Disbursing Checks.

Deposit in American Exchange National Bank.

1895		
Jan. 17,	Deposit to Credit of B. D. Greene, Carter's Disbursing Check, Exhibit 240	$29,000.00
	Allowance trip Carter to New York	75.00
	Amount for division	$28,925.00
	One-third of which is	9,641.66

Contemporaneous Checks.

Checks drawn on American Exchange National Bank:

Check B. D. Greene, credited account of Wm. T. Gaynor, American Exchange National Bank, Jan. 17, 1895, Exhibits 242. 247	$14,591.66
Check B. D. Greene, paid Jan. 17, 1895, favor W. T. Gaynor, Exhibit 242	100.00
Check B. D. Greene cashed by Greene Jan. 19, 1895, Exhibit 242	750.00
Check B. D. Greene, cashed by Greene Jan. 28, 1895, Exhibit 242	4,100.00
Check W. T. Gaynor favor unknown, Paid, Jan. 17, 1895, Exhibit 248	5,000.00

Contemporaneous Deposits of Currency.

1895
Jan. 21, Deposit Exhibit 256, credit R. F. Westcott with Union Trust Co., bills.....$ 3,000.00

Vol 31

For balance of deposit see Division 24. Post P736

INVESTMENTS.

Special Loan to R. F. Westcott Just Prior to Westcott's Departure for Europe.

Deposit currency to credit of R. F. Westcott in Union Trust Co., Exhibit 256:

Vol 31

1895
Jan. 11, Bills, see Division No. 21.....$ 4,000.00
Jan. 11, Bills, see Division No. 21.....3,000.00
Jan. 11, Bills, see Division No. 22..... 3,000.00

$10,000.00

Documentary Evidence of Loan.

The following mortgage notes owned by R. F. Westcot were assigned to Carter as indicated by the evidence on January 25, 1895. The names of the mortgagees and the amounts of the mortgage debts then due on three of these mortgages is stated in letters of O. M. Carter of July 31, 1896, on his letter-press book No. 8, p. 238 to 240, Exhibits 480, 481, 482, Box B-31, as follows: Copied Vol. 11 P52 48-9

Mr. Wm. B. Adams.....$3,000.00
Mrs. Sadie Grant..... 3,000.00
Mrs. Julia Zippel..... 4,000.00

$10,000.00

The original assignment of the Zippel mortgage is in evidence as Complainant's Exhibit 574 (Wyman) and shows an assignment of the mortgage to Carter, January 25, 1895.

Copied Vol. 11 P 51 8-9

The interest on these mortgages appear to have been col-

lected by O. M. Carter while Westcott was in Europe. See Exhibit 589. Vol. 29

Westcott returned from Europe May 12, 1896. Westcott appears to have collected the interest on the Zippel and Adams mortgage notes, and remitted the amount to Carter May 29, 1896. See check stub of R. F. Westcott, Exhibit 563, entry on stub No. 14, check to O. M. Carter:

"Zippel 100
Adams 75 $175"

This check was deposited to Carter's credit in Union Trust Co., June 3, 1896, Exhibit 255. Vol. 31

Evidence of Payment of Loan by R. F. Westcott.

The R. F. Westcott account with the Union Trust Co., during Westcott's absence in Europe, was used by Carter and account kept by him of the receipts and deposits in that account in check stub-book, Exhibit 67, from Box B-31, which has endorsed on it

"Cheque Book
R. F. Westcott,
O. M. Carter, Attorney."

R. F. Westcott returned from Europe May 11, 1896 (*ante*, p. .....), and on May 11, 1896, the last entry ever made by Carter in that book appears, and is as follows: Exh 67 Vol 31

"Bal May 11 = $6436.66
Transferred back to R F W on that date
O. M. C."

As shown by Exhibit 589, Vol 29 this was a complete settlement of the cash transactions appearing in the R F. Westcott, O. M. Carter, Attorney, account. and so far as the stub-book entries shows ended the account and Westcott took charge of that bank account from that time.

Subsequent Checks By Carter.

However, subsequently, the following amounts were withdrawn from that bank account by checks of R. F. Westcott, O. M. Carter, attorney, the stub entries for which were made by R. F. Westcott and not by Carter, to wit:

Aug. 20, 1896, Check on Union Trust Co. favor of O. M. Carter, signed "R. F. Westcott, O. M. Carter, Attorney," endorsed for deposit to credit of O. M. Carter in his individual account in Union Trust Co., Exhibits 251 and 255. Vol 31 ..... $10,000.00

Jan. 22, Similar check similarly deposited, Exhibit 251. The original check for this item has on the back "Coupons" ..... Vol 31 .... 1,961.20

These were the only checks drawn under that power of attorney which were paid out of that R. F. Westcott bank account after May 11, 1896.

The check of August 20, 1896, was a repayment to Carter of the $10,000 loan of January, 1895.

Confirmation by R. F. Westcott's Stub Book.

In R. F. Westcott's check stub book entry, for the $10,000 check of Aug. 20, 1896, on one of the sheets torn out and furnished by Carter to the Attorney-General in 1899, and the photograph of which is in evidence as Complainant's Exhibit 573 (Wyman). The stub reads: Vol. 11 P 5739

"O. M. Carter,
Mortgages $10,000."

Confirmation by Reassignment of Zippel Mortgage.

On the assignment by R. F. Westcott and Margaret J. Westcott, January 25, 1895, of the Zippel mortgage for $4,000 to Carter, is endorsed a reassignment by Carter in his own handwriting, Exhibit 574, Wyman, as follows: Vol 11 P 5741

"For value received, I hereby transfer and assign
Margaret J. Westcott, the bond and mortgage assigne
to me by the foregoing assignment.
Dated New York, Aug. 20, 1896.

O. M. CARTER"

Witness:
F. H. FREEMAN.

The assignment and reassignment of the Adams and Gra
mortgages, could not be found, and are not in evidence, b
Carter admitted that he re-assigned other mortgages to Wes
cott on August 20, 1896. (Wyman Vol. 3) p. 1234.

Carter's Claim.

It is true that Carter now claims that this $10,000 receiv
by him from Westcott's money, was not a repayment to Ca
ter of Carter's loan to Westcott of January, 1895, but w
money placed in Carter's hands for Carter to loan out
Savannah for Westcott, and that he (Carter) about tw
months later, loaned it to Bierne Gordon, in Westcott's nam
October 26, 1896.

Reply.

But the source of the Bierne Gordon loan is shown as fo
lows:

1896

Oct. 26, Check No. 118, O. M. Carter on Union Trust Co. deposited to R. F. Westcott's credit, Exhibit 255 ..... $10,000.

Oct. 26, Check No. 216, R. F. Westcott on Union Trust Co., favor of O. M. Carter, endorsed by O. M. Carter to Bierne Gordon, Exhibits 255, 256 ..... 10,000.

The Gordon note for this loan was, while taken by Carter
Westcott's name, endorsed by the latter to Carter witho
recourse. Exhibit 456 (Wyman), which shows that this w
merely an exchange of checks made between Carter and Wes

cott which enabled Carter to make it appear to Gordon that he was loaning Westcott's money.

R. F. Westcott's Testimony.

Not for the purpose of proving the substantive fact but to charge notice on I. S. and L. D. Carter and against O. M. Carter so far as he is trying to cover assets in their claim of a lien for services as *bona fide* purchasers without notice (*ante*, p. 651-2), we refer to R. F. Westcott's testimony before Commissioner Shields in 1900, as to the fact of the $10,000 loan (~~Shields Vol. 2), p. 1940 to 1946~~, and as to the fact that the Bierne Gordon loan not having been made with Westcott's money. (Shields Vol. 2), p. 886.

Collections and Credits in Account of R. F. Westcott from September 11, 1894, to February 2, 1895, Inclusive of Coupons from Bonds Purchased in Preceding Divisions.

September, 1894, coupons, Exhibits 356, 320, 444:

1894				
Sept. 11,	10	Del. & Hudson Coupons....		$ 350.00
		October, 1894, coupons, Exhibits 320, ~~444~~:		
Nov. 22,	30	Long Docks	$ 900.00	
	10	M—U. S. 4's, 1907.....	100.00	1,000.00
		November, 1894, coupons, Exhibits 320, 444:		
Nov. 22,	10	Wabash 1st 5%.....	$ 250.00	
	5	Chi. & E. Ill. 5%.....	125.00	
	5	Ches. & O. 5%	125.00	
	10	Chi. & N. W. 7%.....	175.00	
	10	Mil. L. S. & W. 6%.....	300.00	
	35	M—U. S. 1904 5%.....	437.50	1,412.50

December, 1894, coupons, Exhibits 320 and 444: Vol 29 and Vol 28

1895					
Jan.	21,	10	Chi., St. P. M. & O. 6%...	$ 300.00	
		10	Morris & Essex 7%.....	350.00	
Jan.	22,	20	Lake S. & M. S. 7%.....	700.00	1,350.0

January, 1895, coupons, Vol 29 and Vol 28 Exhibits 320 and 444:

Jan.	14,	5	Wab., Det. & Chicago 5%...	$ 125.00	
Jan.	21,	10	Chi., Mil & St. Paul 7%...	350.00	
		25	N. Y., Lack. & W. 6%.....	750.00	
Jan.	22,	15	N. Y. Central 7%.....	525.00	
Jan.	21,	5	Joliet & N. Ind. 7%.....	175.00	
		3	Morris & Essex 4-1/2%....	67.50	
		10	U. S. 1907 4%.....	100.00	2,092.5

February, 1895, coupons, Vol 29 and Vol 28 Exhibits 320, 444:

Feb.	1,	10	Chi. N. W. 7%.....	$ 175.00	
Feb.	2,	5	New Jersey Junc. 4%.....	100.00	
Feb.	1,	10	Mil. & St. Paul 8%.....	400.00	
		5	St. Louis & I. Mtn. 5%.....	125.00	
		20	N. Y. Lac. & W. 5%.....	500.00	
		80	U.S. 1904 5%	1,000.00	2,300.0

Accounted to by Westcott to Carter, see adjustment below

ADJUSTMENT BETWEEN WESTCOTT AND CARTER.

R. F. Westcott's Receipts and Disbursements.

September 11, 1894, to February 4, 1895, from deposit made from the mysterious sources.

1894		Disbursements.	Receipts
Sept. 11,	Deposit a/c R. F. W. Union T. Co. Ex. 256, 320, 441, Vol 31 Vol 29 Vol 28 Bills		$50,000.0
Sept. 11,	Deposit a/c R. F. W. Union T. Co. Ex. 256, 320, 444, Vol 31 Vol 29 Vol 28 D. & H. coupons Sept., 1894		350.0

Sept. 11,	Deposit a/c R. F. W. Reed & Flagg, Ex. 239 Currency. Vol 31		53,022.78
Sept. 11,	Cost of securities, Reed & Flagg, Ex. 239..... Vol 31	$53,022.78	
Oct. 9,	Cost of securities, Ex. 239 Vol 31	43,921.42	
Oct. 11,	Cash accounted for R. F. W. deposit U. T. Co. a/c O. M. C., Ex. 66, 597. Vol 31. Vol 29	200.00	200.00
Oct. 24,	Deposit a/c R. F. W.—U. T. Co., Ex. 256 Bills. Vol 31...		4,000.00
Oct. 24,	Payment a/c 8th Ave Property Ex. 255-275 . Vol 31.....	4,004.50	
Nov. 20	Check R. F. W. credited to a/c O. M. C.—U. T. Co., Ex. 255 & 66 . Vol 31.....	800.00	
Nov. 22,	October, 1894, coupons collected by R. F. W., Ex. 320-444 . Vol 28..... Vol 29		1,000.00
Nov. 22,	November, 1894, coupons collected by R. F. W., Ex. 320-444 . Vol 28.....		1,412.50
Nov. 26,	Payment R. F. W. check a/c 8th Ave. property, Ex. 255, 273, 274 Vol 31.....	259.25	
Nov. 26 & 27,	Deposit a/c R. F. W. Title Guar. Co., Ex. 426, Bills ..... Vol 28		35,550.00
Nov. 26 & 27,	Payment a/c 8th Ave. Purchase, Ex. 421, 426. Vol 28	35,550.00	
Dec. 4,	Deposit a/c R. F. W.—Reed & Flagg, Ex. 239, currency. Vol 31		53,000.00
Dec. 4,	Cost of securities, Reed & Flagg, Ex. 239..... Vol 31....	53,775.00	
Dec. 13,	Deposit a/c R. F. W.—U. T. Co. ck. J. F. Bragg, 8th Ave. rent, Ex. 441, 420. Vol 28		247.67
Dec. 31,	Deposit a/c R. F. W.—U. T. Co., Ex. 256 Bills. Vol 31...		1,200.00
Dec. 31,	Cash accounted for R. F. W. deposit U. T. Co. a/c O. M. C., Ex. 256 Bills . Vol 31....		1.200.00
Dec. 31,	Cash accounted for R. F. W. deposit U. T. Co. a/c O. M. C., Ex. 255 . Vol 31.....	452.13	452.13

Jan. 14,	Deposit a/c R. F. W.—U. T. Co. ck. J. F. Bragg 8th Ave. rent, Ex. 441, 420. Vol 28.			$ 245.00
Jan. 14,	Cash accounted for R. F. W. deposit U. T. Co. a/c O. M. C., Ex. 255 Vol 31	$ 415.35		415.35
Jan. 21, 22,	December, 1894, coupons collected by R. F. W., Ex. 444 Vol 28 & 320 Vol 29			1,350.00
Jan. 14, 22,	Jan., 1895, coupons collected by R. F. W., Ex. 444 Vol 28 & 320 Vol 29			2,092.50
Feb. 1, 2,	Feb., 1895, coupons collected by R. F. W., Ex. 444 & 320 Vol 28 Vol 29			2,300.00
			$192,400.43	$206,837.93
1895				
Jan. 11,	Deposit a/c R. F. W. U. T. Co., Ex. 256, Vol 31 Bills $4,000.			
Jan. 11,	Deposit a/c R. F. W. —U. T. Co., Ex. 256, Vol 31 Bills 3,000.			
Jan. 21,	Deposit a/c R. F. W. U. T. C., Ex. 256, Vol 31 Bills 3,000.			10,000.00
	Excess receipts R. F. W. over disbursements	24,437.50		
			$216,837.93	$216,837.93
	Excess receipts R. F. W. over disbursements as above			24,437.50
Feb. 4,	Bal. in Bank a/c R. F. W. in U. T. Co. turned over to O. M. C., Ex. 67, 441. Vol 31 Vol 28	9,102.72		
Jan. 11, 21,	Special deposit to a/c R. F. W. U. T. Co. as above	10,000.00		19,102.72
Feb. 4,	Balance R. F. W. accountable, Ex. 589 Vol 29			5,334.78

Criticism by Defendant's Expert.

The defendant's expert has criticised the foregoing adjustment statement as not justified by the Exhibits therein referred to in the following items, to wit:

1894
Oct. 11, Deposit by R. F. Westcott in Carter's account in Union Trust Co. per Exhibit 66 Vol 3 $200.00
Dec. 31, Deposit by R. F. Westcott in Carter's account in Union Trust Co. per Exhibit 255 Vol 3 452.13
Jan. 14, Deposit by R. F. Westcott in Carter's account in Union Trust Co. per Exhibit 255 Vol 3 415.35

The criticism is that in the foregoing statement these particular items are put in both the debit and credit columns.

The answer to the criticism is that there were large amounts of division money not brought out, Carter and Westcott had a joint safety deposit box. If those particular deposits were made from Westcott's own money, then they should not be entered in both columns, and the criticism would be justified. On the other hand, if Westcott took it out of Carter's money in the box, or having taken an equivalent amount from the box for his own use, then he makes it good by depositing an equivalent amount to Carter's credit in the bank, then it should be entered in both columns, because otherwise it would be giving Westcott credit for depositing Carter's money.

That these particular items consisted of deposits of Carter's own money made by Westcott is shown by the fact that by so treating them it brings out a balance due from Westcott to Carter of $5,334.78. And that this was the exact balance is shown by the fact that by commencing with that balance the succeeding transactions to May 1, 1895, which are entered by Carter on the check stub book kept by him of the R. F. Westcott, O. M. Carter, Attorney, account, exactly brings out the balance then due Westcott by Carter, $1,204.25, as shown by Carter's entries on the stub book. Exh 67 Vol 3

"May 1 = 24851.83 = A
" 1204.25 = B"

26056.08

See Analysis of the check stub book entries in Exhibit 589. Vol. 29 and Post P. 767

P. 734. Note

*And see the statement of the debits and credits taken from Carter's stub book entries which bring out the above A and B balances. (Vol. 13, p. 6110, and cross-examination of Carter thereon, p. 6107 to 6112.)

Balance of thirds:

Balance not deposited or brought out to Jan. 11, 1893 (*ante*, p. 723)		$5,768.05
Jan. 17, 1895. Third of division		9,641.66
		$15,409.71
Jany. 21, 1895. Deposit of currency (*ante*, p. 725)	$3,000.	
Oct. 11, 1894. Deposit of currency (*ante*, pp. 731–2)	200.	
Dec. 31, 1894. Deposit of currency (*ante*, pp. 731–2)	452.13	
Jany. 14, 1895. Deposit of currency (*ante*, pp. 731–2)	415.35	$4,067.48
Balance not deposited to Jany. 31, 1895		$11,342.23

DIVISION NO. 23 (FEBRUARY 4, 1895), EXHIBIT 319. Vol. 30

rter Was Not in New York Feb. 4, 1895, and R. F. Westcott Was in Europe.

Deposit of Carter's Disbursing Check.
Deposit in American Exchange National Bank.
95.

b. 4, Deposit to credit of Wm. T. Gaynor, Carter's disbursing check, Exhibit 246 ..... ($30,000.00
Amount for division 30,000.00
One-third of which is 10,000.00

ntemporaneous Check.—Drawn on American Exchange National Bank.

heck W. T. Gaynor, credited account B. D. Greene, American Ex. Nat. Bank, Feb. 4, 1895, Exhibit 248, 241 ..... $13,000.00

Carter could not have got his $10,000 at this time. He was sent on a pleasure trip to Mexico (Wyman Vol. 3), p. 1256.

See Division No. 24, showing that he got it then.

P. 735. Note

*Statement of thirds of divisions, and corresponding currency deposits made by Carter while Westcott was in Europe, Feb. 4, 1895, to May 11, 1896, Divisions 23 to 30:

Thirds of Divisions		not then deposited	Currency Deposits	
Jan. 31, 1895,	$11,342.23			
Feb. 4, 1895,	10,000.00	Third		
Mch. 5, 1895,	7,070.38	Third	Mch. 7, 1895,	$20,000.00
Apl. 8, 1895,	23,308.33	Third	Apr. 8, 1895,	17,327.08
May 22, 1895,	9,095.02	Third	June 7, 1895,	9,500.00
June 7, 1895,	18,743.81	Third	July 5, 1895,	14,500.00
July 5, 1895,	45,530.69	Third	Oct. 9, 1895,	33,000.00
Aug. 1895,	7,409.99		Oct. 10, 1895,	16,000.00
Sept., 1895,	136.60		Mch. 30, 1896,	3,500.00
			May 11, 1896,	400.
	$132,637.05			$114,227.08

Carter accounts for the source of this $114,227.08 by an alleged Grand Central depot visit Jany. 2, 1895, when $150,000, he alleges, were put in the joint box. (*Post*, p. 809.) See refutation. (*Post*, p. 812.)

DIVISION NO, 24 (MARCH 5, 1895), EXHIBIT 319. Vol 30

Carter Was in New York March 5, 1895.

This is shown by Exhibit 251. Carter admits he was there and this time he reported his absence on leave (Wyman Vol. 3), p. 1258.

Disposition of Carter's Disbursing Check.

1895		
March 5,	Carter's disbursing check No. 269,424 was cashed over the counter by the Assistant Treasurer, New York, Exhibit 249	$21,287.65
	Allowance trip Carter to New York...	75.00
	Amount for division	$21,212.65
	One-third of which is	7,070.88

Contemporaneous Deposits of Currency.

1895	(R. F. Westcott in Europe.)	
March 5,	Deposit Exhibit 253, 67 by O. M. Carter, in account of R. F. Westcott, O. M. Carter, Attorney, with the Union Trust Co.	$20,000.00
Division 22—Jan. 17, 1895, previously unaccounted for		$6,716.66
Division 23—Feb. 4, 1895, previously unaccounted for		10,000.00
Division 24—March 5, 1895, previously unaccounted for		7,145.88
		$23,862.54
	Deposit now accounted for	20,000.00

Purchased by O. M. Carter in account of R. F. Westcott with Reed & Flagg, Exhibit 239 (Westcott absent in Europe).

1895		
March 6,	25 M—United States Coupon 1925 4% bonds	$29,875.00
March 25,	10 M—United New Jersey 1944 4% bonds	11,100.00
		$40,975.00

Paid for by:

1895			
March 6,	Sale through Reed & Flagg, 10 M—U. S. Coupon 1904 5% bonds, Bought Division 18 (see *ante*, p. 708)		$11,568.75
March 6,	Sale through Reed & Flagg, of 20 M—U. S. Coupon 1904 5% bonds, Bought Division 19 (see *ante*, p. 713)		23,137.50
March 6,	Sale through Reed & Flagg, 10 M—U. S. Coupon 1907 4% bonds, Bought Division 18 (see *ante*, p. 708)		11,193.75
March 8,	Allowance 3/8% on 25 M—bonds bought March 6, 1895		93.75
March 25,	Check R. F. Westcott, O. M. Carter, Attorney, on Union Trust Co., Exhibit 67, 254 Vol. 31		11,126.67
			$57,120.42

Less:

March 7,	Check Reed & Flagg, deposited to credit R. F. Westcott, O. M. Carter Attorney, a/c Union Trust Co., Exhibit 253, Vol 31 for proceeds sale securities March 6, 1895, above stated	$45,900.00		
	Less purchase March 6, 1895, above	29,875.00	$16,025.00	
March 8,	Check Reed & Flagg, deposited to credit R. F. Westcott, O. M. Carter, Attorney, account with Union Trust Co.		$93.75	
	Interest charged by Reed & Flagg		26.67	16,145.42
				$40,975.00

COLLECTION OF COUPONS

The coupons on these 25 United States 1925 4% bonds bought in this Division, were collected by Carter, and credited May 22, 1895, in account of R. F. Westcott, O. M. Carter, Attorney, with Union Trust Co., Exhibit 253; this was the only collection of coupons as they were sold on June 6, 1895. Carter withdrew and spent the money from the R. F. Westcott, O. M. Carter, Attorney account.

The coupons on these 10 United New Jersey 1944 4's were collected as stated in Division 18 (see *ante*, p. 709).

FINAL DISPOSITION.

The United States 4% bonds, were sold June 6, 1895, by O. M. Carter, through Reed & Flagg, in account of R. F. Westcott and reinvested, see Division 27 (*post*, p. 747).

The United New Jersey 1944, 4 % bonds, are included in final receipt of October 29, 1897, and were subsequently sold by J. H. Paul, acting as agent for O. M. Carter on April 9, 1900, through Tracy & Co., brokers, New York, Exhibit 403 (Parsons).

P. 738. Note

*Statement of account R. F. W. O. M. Carter, atty., with trust fund in Union T. Co.:

Feb. 4, 1895.	Balance of trust fund turned over by Westcott to Carter in Union T. Co. (*ante*, p. 732)	$9,102.72
Feby. 16, 1895.	Deposit of the 8th avenue rent (*post*, p. 769)	267.99
Mch. 5, 1895.	Deposit of coupons (*post*, p. 769)	550.00
Mch. 7, 1895.	Deposit of bills	20,000.00
Mch. 7, 1895.	Deposit check Reed & Flagg (sale of securities)	16,025.00
Mch. 11, 1895.	Deposit of 8th avenue rent	250.00
Mch. 13, 1895.	Deposit check Reed & Flagg (sale of securities)	93.75
		$46,289.46
	Withdrawals:	
Mch. 25, 1895.	Check to Reed & Flagg for securities (*ante*, p. 737)	$11,126.67
	Balance of trust fund in Union T. Co. Mch. 31, 1895	$35,162.79

DIVISION NO. 25 (APRIL 8, 1895), EXHIBIT 319. Vol. 30

Carter Was in New York April 8, 1895.

Carter admits this, also he made report of his absence this time on leave April 7th to 18th (Wyman Vol. 3), p. 1267. Vol. 30

Deposit of Carter's Disbursing Checks.

Deposit in American Exchange National Bank.

1895			
April 8,	Deposit to credit of Wm. T. Gaynor, Carter's disbursing checks, Exhibit 246 Vol. 31		$70,000.00
	Allowance trip Carter to New York		75.00
	Amount for Division		$69,925.00
	One-third of which is		23,308.33

Contemporaneous Checks.

Checks drawn on American Exchange National Bank:

Check W. T. Gaynor, favor of unknown, cashed April 8, 1895, Exhibit 248 Vol. 31		$23,383.33
Check W. T. Gaynor, credited Apr. 17, 1895, to account B. D. Greene, American Exchange National Bank, Exhibit 241, 248 Vol. 31		23,308.33

Distribution.

Deposit credit of W. T. Gaynor as above		$70,000.00
Check *cashed* by unknown	$23,383.33	
Check Gaynor deposited credit B. D. Greene	23,308.33	46,691.66
Left in Gaynor's account		$23,308.34

Contemporaneous Deposits of Currency.

1895 (R. F. Westcott in Europe.)
April 8, Deposit Exhibit 239, by O. M. Carter, for credit of R. F. Westcott with Reed & Flagg, specie and bills $17,327.08
For balance of deposit see Divisions 28, 29 and 30.

INVESTMENTS.

Purchased by O. M. Carter in account of R. F. Westcott, with Reed & Flagg, Exhibit 239 (Westcott absent in Europe).
1895
April 8, 10 United New Jersey 1929 4% bonds... $11,000.00
April 8, 5 Del. & Hudson Pa. Div. 7% bonds.... 7,150.00
April 9, 5 N. Y. Lack. & W. 1st Mtge. 6 % bonds. 6,650.00
Apr. 10, 5 Chi. & N. W. 7% bonds 6,956.25

$31,756.25

Paid for by:

April 8, Currency and specie deposit as above.....	$17,327.08	
April 8, 30 Long Dock Coupons.....	900.00	
April 9, Check R. F. Westcott, O. M. Carter, Attorney, drawn on Union Trust Co. New York..	6,650.00	
Apr. 10, Check R. F. Westcott, O. M. Carter, Attorney, drawn on U. T. Co.	6,956.25	
	$31,833.33	
Less:		
April 8, Interest charged, $41.11 & 35.97	77.08	$31,756.25

~~$57,139.42~~

COLLECTION OF COUPONS.

The United New Jersey 1929 4 *Per Cent. Bonds.*

The coupons on these maturing September, 1895, while Westcott was in Europe, were deposited in the R. F. Westcott, O. M. Carter, Attorney, account, and the money was drawn out and spent by Carter, Exhibit 589.

The coupons on same were deposited by O. M. Carter to the credit of his individual account with Union Trust Co., as shown by Exhibit 251, March 6, 1896, October 12, 1896, and March 10, 1897.

The Delaware & Hudson, Penna. Div. 7 Per cent.

The coupons of these 5 Delaware and Hudson, Pa Div. 7 per cent. bonds, were collected as stated in Division *a*. (See *ante*, 660).

The N. Y. Lackawanna & Western 1st Mortgage 6 Per Cent.

The coupons on these 5 N. Y. Lack. & Western 1st Mortgage 6 per cent. bonds, were collected as stated in Division 10 (see *ante*, 662).

The Chicago North Western Consolidated 5's.

The coupons on these 5 Chicago & North Western Consolidated 5 per cent. bonds, purchased in this division were collected during 1895, while Westcott was in Europe, by Carter and deposited in the R. F. Westcott, O. M. Carter, Attorney, [illegible] the Union Trust Co. and the money was drawn

P. 741. Note

*Statement of account of R. F. W., O. M. Carter, atty., with trust fund in Union T. Co.:

Mch. 31, 1895. Balance of trust fund in U. T. Co. (*ante*, p. 738)		$35,162.79
Apl. 24, 1895. Deposit of 8th avenue rent (*post*, p. 769)		225.00
		$35,387.79
Withdrawn:		
Apl. 9, 1895. Check to Reed & Flagg for investment (*ante*, p. 740)	$6,650.00	
Apl. 10, 1895. Check to Reed & Flagg for investment (*ante*, p. 740)	6,956.25	13,606.25
Balance of trust fund in Union T. Co. to Apl. 30, 1895		$21,781.54
Add amount of collections from R. F. Westcott's rents deposited in Union T. Co., Feb. 4, 1895, to May 1, 1895, applied by Carter to wiping out the balance due Carter on open a/c Feby 4, 1895 (see *ante*, p. 732 and *post* p. 768 and 769)		$5,334.78
		$27,116.32
Subtract amounts withdrawn by Carter by check Feb. 4 to May 1, 1895, for personal expenses (*post*, p. 770)		2,264.49
Balance of trust fund actually left in Union Trust Co. May 1, 1895 (see *post*, p. 770), "May 1=$24,851.83=A."		$24,851.83

United New Jersey.

The United New Jersey 1929—4 per cent. bonds, are included in final receipt of October 29, 1897, and were subsequently sold by J. H. Paul, acting as agent for O. M. Carter, on April 9, 1900, through Tracy & Co., Brokers, New York. Exhibit 403 (Parsons). Vol. 28

Delaware & Hudson, Penn. Division.

The Delaware & Hudson, Pa. Division 7 per cent. bonds, are included in final receipt of October 29, 1897, and were subsequently sold and proceeds tied up in the hands of Receiver in the case of *U. S. v. O. M. Carter, et al.*, in West Virginia. Exhibit 450 Vol 29 and Exhibit 432 Vol. 28

N. Y. Lackawana & W. 1st Mortgage 6 Per Cent.

The N. Y. Lack. & W. 1st Mortgage 6 per cent. bonds, are included in final receipt of October 29, 1897, and were subsequently sold, and proceeds tied up in the hands of Receiver in the case of *U. S. v. O. M. Carter, et al.*, in West Virginia. Exhibit 450, Vol 29 and Exhibit 432 Vol 28

Chicago & North Western 7 Per Cent.

The Chicago & North Western 7 per cent. bonds, are included in final receipt of October 29, 1897, and were subsequently sold by Frank P. Blair, the Attorney for O. M. Carter, on September 24, 1900, through A. O. Slaughter & Co., brokers, Chicago, Illinois. Exhibit 7 (Booth) Vol 10 P 492

DIVISION NO. 26 (MAY 22, 1895), EXHIBIT 319. Vol. 30

Carter Was in New York May 22, 1895.

This is shown by Exhibit 253. Carter admits this, and that he did not report his absence on that date, in his monthly report (Wyman Vol. 3), p. 1284.

Deposits of Carter's Disbursing Checks.

Deposit in American Exchange National Bank:

1895		
May 22,	Deposit to credit of John F. Gaynor, Carter's disbursing checks, Exhibit 243	$27,360.08
	Allowance trip Carter to New York	75.00
	Amount for division	$27,285.08
	One-third of which is	9,095.02

Contemporaneous Checks.

Check John F. Gaynor favor unknown, cashed May 22, 1895, Exhibit 245	$9,170.00
Check John F. Gaynor, credited May 22, 1895, to account of B. D. Greene, American Exchange Nat. Bank, Exhibits 245, 241	9,095.00

Distribution.

Deposit credit of John F. Gaynor as above		$27,360.08
Check John F. Gaynor, favor of unknown	$9,170.00	
Check John F. Gaynor, deposited to credit of B. D. Greene	9,095.00	18,265.00
Left in John F. Gaynor's hands		$ 9,095.08

For deposit see Divisions 28, 29 and 30. Post Page 754

INVESTMENTS.

Purchased by O. M. Carter in account of R. F. Westcott, O. M. Carter, Attorney, while Westcott was absent in Europe: Exhibits 54 and 64 Vol. 31

1895		
May 29, Purchased through Austin R. Myres, 30 shares Tow Boat stock		$3,000.00
June 5, Purchased through Platshek & Co., 6 shares Brush Electric stock		360.00
		$3,360.00

Paid for by:

1895		
May 29, R. F. Westcott, O. M. Carter, Attorney, check on Union Trust Co.	$3,000.00	
June 5, R. F. Westcott, O. M. Carter, Attorney, check on Union Trust Co.	360.00	3,360.00

COLLECTION OF DIVIDENDS.

Towboat Stock.

All dividends on Towboat Company stock were collected by O. M. Carter, Exhibit 449 (Wyman). Vol. 29

Brush Electric Stock.

All dividends on Brush Electric stock were collected by O. M. Carter, Exhibit 321 (Wyman). Vol. 29

FINAL DISPOSITION.

Vol 24 @ 11761 and 11795-97

Neither the Towboat Stock or Brush Electric Stock were on receipts of October 11, 1897, and October 29, 1897. Exhibits 269 and 272. The certificates in the name of O. M. Carter are in the hands of the Receiver in this cause.

P. 744. Note

*Statement of account R. F. W., O. M. Carter, atty., with Trust fund in Union Trust Co.:

May 1, 1895. Balance in Union T. Co. (*ante*, p. 741)		$24,851.83
May 21, 1895. Deposit coupons (Exh. 589, Vol. 29)		1,062.50
May 22, 1895. Deposit coupons (Exh. 589, Vol. 29)		875.00
May 23, 1895. Deposit 8th avenue rent (Exh. 589, Vol. 29)		249.00
		$27,038.33
Withdrawals (Exh. 589, Vol. 29):		
May 4, 1895. Checks for personal expenses	$ 322.69	
May 29, 1895. Check for tow boat stock	3,000.00	
June 3 (5th), 1895. Check for Brush stock	360.00	3,882.6.
Balance of trust fund in bank June 5, 1895		$23,155.6

DIVISION NO. 27 (JUNE 7, 1895), EXHIBIT 319

Carter Was in New York June 7, 1895, and Makes False Report of Whereabouts.

This is shown by Exhibits 318, 253. Carter admits this (Wyman Vol. 3), p. 1295. He also admits he failed to state his absence in his monthly report (Wyman Vol. 3), p. 1290.

Deposit of Carter's Disbursing Checks.

Deposited in American Exchange National Bank:

1895			
June 7.	Deposit to credit John F. Gaynor, Carter's disbursing checks, Exhibit 243		$56,306.43
	Allowance trip Carter to New York		75.00
	Amount for division		$56,321.43
	One-third of which is		18,743.81

Contemporaneous Checks.

Check of John F. Gaynor favor unknown, cashed June 7, 1895, Exhibit 245		$18,818.81
Check John F. Gaynor, credited June 7, 1895, to account B. D. Greene, Am. Exchange Nat. Bank, Exhibits 241, 245		18,743.81
Distribution.		
Deposit of John F. Gaynor as above....		$56,306.43
Check John F. Gaynor, favor unknown	$18,818.81	
Check John F. Gaynor, credited to account B. D. Greene..	18,743.81	37,562.62
Left in John F. Gaynor's hands....		$18,743.81

Contemporaneous Deposits of Currency.

(R. F. Westcott in Europe.)

1895

June 7, Deposit Exhibit 239, by O. M. Carter, for credit of R. F. Westcott, with Reed & Flagg, bills $9,500.00

For balance of deposit see Divisions 28, 29 and 30.

INVESTMENTS.

Long Dock Bonds.

Purchased by O. M. Carter, in account of R. F. Westcott, with Reed & Flagg, Exhibit 239 (Westcott absent in Europe):

1895

June 7, 18M—Long Dock 6% Bonds..... $23,445.00
June 17, 2 M—Long Dock 6% bonds..... 2,612.50

$26,057.50

Paid for by:

1895

June 7, Currency deposit as above..... $9,500.00
June 7, Check R. F. Westcott, O. M. Carter, Attorney, on Union Trust Co., Exhibits 239, 254.. 13,945.00
June 17, Check R. F. Westcott, O. M. Carter, Attorney, on Union Trust Co. Exhibits 239, 254.. 2,612.50 $26,057.50

Brush Electric Stock.

June 22, Purchased by O. M. Carter through Platchek & Co., 15 shares Brush Electric L. & P. Stock, Exhibit 56 & 539. 918.75

Paid for by:

June 22 Check O. M. Carter on Merchants National Bank, Savannah, Ga., Exhibits 56 and 539 ..... 918.75

P. 746. Note

*On June 22, 1895, there was a transfer by check of $1,000 from the R. F. Westcott, O. M. Carter, atty., account in Union T. Co. to credit of O. M. Carter in Mer. Nat. Bank, and from this fund, the above Brush stock was paid for (p. 750).

Colleton, Hunting Island or Port Savannah Co.

Bought through W. W. Mackall, while Westcott was in Europe:

1895

June 26, "Paid Fee in Colleton Matter" Exhibit 67, 254 Vol. 31 ..... $144.00

June 28, 1st assessment Port Savannah Co. Exh 67 and 254 Vol. 31 ..... 150.00

$294.00

Paid for by:

1895

June 26, Check R. F. Westcott, O. M. Carter, Attorney, on Union Trust Co., Exhibits 67 & 254 Vol. 31 ..... $144.00

June 28, Check R. F. Westcott, O. M. Carter, Attorney, on Union Trust Co., Exhibits 67 and 254 Vol. 31 ..... 150.00

$294.00

Reinvestment "H" from Proceeds of Sales of Securities Purchased in Division No. 24. Ante 8737

Brewing Stock.

Bought through Platchek & Co., while Westcott was in Europe.

1895

June 29, 13 shares, Brewing Co., stock, Exhibits 67 and 254 Vol. 31. $1,228.50

Brush Electric Stock.

Bought while Westcott was in Europe.

June 29, Bought through Platchek & Co., 4 shares Brush Electric stock Exh 67 & 254 Vol. 31 $233

Bought through James Hunter, 2 shares Brush stock, Exhibits 67 & 254 116 Vol. 31

$349.00

Amt Carried Forward $1,577.50

Amount brought forward $1,577.50

T. M. Cunningham Note.

Negotiated while Mr. Westcott was in Europe.
June 29, Loan to T. M. Cunningham, secured by conveyance of real estate in Atlanta, Ga.... 10,000.00

Exhibits 67 and 254 Vol. 31

John Lyons Note.

Negotiated while Westcott was in Europe.
July 1, Loan to John Lyons, secured by conveyance of real estate in Savannah, Ga. Lathrop property Exhibits 67 and 254 Vol. 31. 15,000.00 $26,577.50

Paid for by following checks drawn by R. F. Westcott, O. M. Carter, Attorney, on Union Trust Co.:

1895

June 29,	Exhibits 254, 280, 67 Vol. 31	$10,000.00	
June 29,	Exhibits 254, 67	1,228.50	
June 29,	Exhibits 254, 67	233.00	
June 29,	Exhibits 254, 67	116.00	
July 1,	Exhibits 279, 254, 67	15,000.00	$26,577.50

COUPON COLLECTIONS.

The Long Dock 6 Per Cent. Bonds.

The coupons on these 20M—Long Dock 6 per cent. bonds bought in Division No. 27, were collected as stated in Division 8 (see *ante*, p. 657).

Dividends.

The dividends on Brush Electric Stock and Brewing Co., stock, were all collected by Carter. Exhibit 321 (Wyman).

Interest Notes.

The semi-annual interest notes on the T. M. Cunningham loan for $10,000 were all collected by O. M. Carter, and deposited in his personal bank accounts in New York and Savan-

nah (Exhibit 320) save in one instance, when Carter personally deposited on December 23, 1896, Exhibit 515, one of the notes in Union Trust Co., for credit of R. F. Westcott, and same was credited to Westcott December 29, 1896, $275 (Exhibits 320 and 444). This collection was accounted for by Westcott to Carter (*post*, p. 791).

The semi-annual interest notes on the John Lyons loan for $15,000 were all collected by O. M. Carter, and deposited in his personal bank accounts in New York and Savannah (Exhibit 320). Save in one instance when Carter personally deposited on December 23, 1896, Exhibit 515, one of the notes in Union Trust Co. for credit of R. F. Westcott, and same was credited to Westcott, December 31, 1896, Exhibit 320 and 444. This collection was accounted for by Westcott to Carter (*post*, p. 791).

FINAL DISPOSITION.

Long Dock Bonds.

The Long Dock 6 per cent. bonds purchased in this Division, all included in final receipt of October 29, 1897, and were subsequently sold and proceeds tied up in the hands of Receiver, in suit *U. S. v. O. M. Carter et al.*, in West Virginia.

Brush Electric Stock.

The Brush Electric stock was sold January 27, 1899, and check for proceeds issued to order of O. M. Carter for $4,500, Exhibit 419 (Parsons) and Carter endorsed it to J. H. Paul, his agent, who deposited it in Peoples Bank of Brooklyn. Exhibit 406 (Parsons).

Hunting Island Stock.

Sold and collected through Charlton & Mackall, Attorneys for O. M. Carter, and proceeds tied up in Receiver's hands,

U. S. v. *O. M. Carter, et al.*, in Southern District of Georgia, at Savannah. Vol 1 P304

Savannah Brewing Co. Stock.

In hands of Receiver in *U. S.* v. *O. M. Carter, et al.* Vol. 1 P3

T. M. Cunningham Note, $10,000.00.

The Cunningham note was not in the receipt of October 29, 1897, but the mortgage deed was listed in the receipt Vol 24 P11

This note, $10,000, is included in receipt given by I. S. and D. P. Carter for securities May 23, 1900, Exhibit 3 (Booth). Vol 10 P4804-2
I. S. Carter, sent it for collection to Charlton & Mackall, Attorneys, Savannah, Ga. Vol. 10 P4974

A portion of the proceeds $4,000, was sent by Charlton & Mackall, to Jere Wilson, Attorney, for Carter, at Washington, D. C.

4974 See stipulation ~~(Booth Record Vol. 1) p. 28-39-29.~~

John Lyons Note, $15,000.00.

This note is in evidence, Exhibit 451 (Wyman). It is endorsed by R. F. Westcott without recourse. Vol. 11 P5101

This note was collected by R. E. Westcott, acting as agent for O. M. Carter, July 17, 1899. Exhibit 405 (Parsons). Vol 2

P. 750. Note

*Statement of account R. F. W., O. M. Carter, atty., with trust fund in Union Trust Co.:

June 5, 1895. Balance in Union T. Co. (*ante*, p. 744)		$23,155.64
June 7, 1895. Deposit check of Reed & Flagg for sale of 25 U. S. coupon 4% bonds sold June 7, '95, per Exhibit 239, Vol. 31, and Exh. 589, Vol. 29		30,828.12
June 7, 1895. Deposit coupons (Exh. 589, Vol. 29)		1,350.00
June 11, 1895. Deposit 8th avenue rent (Exh. 589, Vol. 29)		225.00
		$55,558.76
Withdrawn:		
June 7, 1895. Check to Reed & Flagg for investments (*ante*, p. 746)	$13,945.00	
June 13, 1895. Check to Reed & Flagg for investments (*ante*, p. 746)	2,612.50	
June 27, 1895. Check for Colleton (Hunting Island) Invt. (Exh. 589)	144.00	
June 28, 1895. Check for Colleton (Hunting Island) Invt. (Exh. 589)	150.00	
June 29, 1895. Check for Cunningham loan, Invt. (Ex. 589)	10,000.00	
June 29, 1895. Check for John Lyons loan, Invt. (Ex. 589)	15,000.00	
June 29, 1895. Check for brewing stock Invt. (Ex. 589)	1,228.50	
June 29, 1895. Checks for Brush stock Invt. (Ex. 589)	349.00	
June 22, 1895. Transfer to Mer. N. Bk. (Ex. 589)	1,000.00	
June 10, 12, 13, 15, 20, 27, 29. Checks for personal uses and loan to Burnett (Ex. 589)	1,744.89	46,173.89
Balance in trust fund in U. T. Co. to June 30, 1895		$9,384.87

DIVISION NO. 28 (JULY 5, 1895), EXHIBIT 319. Vol. 30

Carter Was in New York July 5, 1895.

This is shown by Exhibit 253. Carter admits he was in New York, July 4, 5, 6, 7, 8, 9th, 1895, and did not state that absence in his monthly report (Wyman Vol. 3), p. 1336.

Deposit of Carter's Disbursing Checks.

Deposited in American Exchange National Bank, New York, Exhibits 240 and 246.

1895.

July 5, Carter's disbursing checks deposited to credit of B. D. Greene	$ 84,656.82
July 5, Carter's disbursing checks deposited to credit of W. T. Gaynor	57,505.13
	$142,161.95
Less payment to W. T. Gaynor, Exhibits 247, 242	5,494.87
	$136,667.08
Allowance Carter's trip to N. Y.	75.00
Amount for Division	$136,592.08
One-third of which is	45,530.69
Allowance	75.00

Contemporaneous Checks.

Check B. D. Greene, paid July 5, 1895, deposited credit of J. F. Gaynor, Exhibit 242, 244	$ 5,225.00
Check B. D. Greene, paid July 5, 1895, deposited credit of J. F. Gaynor, Exhibit 242, 244	39,580.92
Check B. D. Greene paid July 5, 1895, deposited credit of W. T. Gaynor, Exhibit 242, 247	5,494.87
Check W. T. Gaynor, paid July 5, Exhibit 248, favor of unknown	45,000.00
Check W. T. Gaynor paid July 11, 1895, Exhibit 248, favor of unknown	18,000.00
Check J. F. Gaynor, paid July 11, Exhibit 245, favor of unknown	10,000.00

Contemporaneous Deposits of Currency.

(*Westcott in Europe*).

1895.

July 5, Deposits in account R. F. Westcott, O. M. Carter, Attorney, in Union Trust Co., bills . . $ 14,500.00

For balance of deposits see Division No. 30, (Carter went to Europe July 10, 1895 and returned Sept. 28, 1895, Wyman Vol. 3, p. 1336).

P. 752. Note

*Statement of account of R. F. W., O. M. Carter, atty., with trust fund in Union T. Co.:

June 30, 1895.	Balance in U. T. Co. (*ante*, p. 750)		$9,384.87
July 3, 1895.	Interest credited by bank (Exh 589, Vol. 29)		123.60
July 5, 1895.	Deposit currency (Exh. 589, Vol. 29)		14,500.00
July 5, 1895.	Deposit coupons (Exh. 589, Vol. 29)		2,142.50
			$26,150.97
	Withdrawals:		
July 1, 1895.	Checks for personal use (Exh. 589)	$ 75.	
July 1, 1895.	Check transfer to So. Bk. St. Ga. to credit J. W. O. Sterly, atty (Exh. 589 and Vol. 13, pp. 6159–60)	5,000.	
July 1, 1895.	Check Present to I. S. Carter (Exh. 589)	2,500.	
July 5, 1895.	Check for letter of credit to Carter (Exh. 589)	5,000.	
July 9, 1895.	Check for insurance premium (Exh. 589)	453.	13,028.00
Balance of trust fund in Union T .Co. July 10, 1895			$13,122.97

The check for insurance premium was issued July 9, 1895, per stub book, but not cashed by the Union T. Co. until July 10, 1895, per the accounts. The notation of this as an investment is entered. (*Post*, p. 755.)

This was the first premium paid on policy No. 743,543 for $10,000 in Equitable Life Ins. Co.

For the investments made with $5,000 transferred on July 1, 1895, to credit of O. M. Carter, J. W. O. Sterly, atty., in So. Bk. State Ga., see *post*, p. 755.

DIVISION NO. 29 (AUGUST, 1895), EXHIBIT 319. Vol 30

(O. M. Carter was in Europe July 10th to September 28th, 1895, and Geo. W. Goethals disbursed from Washington for him in his absence (Wyman Vol. 3), p. 1337.) Vol. 13 P. 6148

Disbursing Check.

Check G. W. Goethals, Aug. 5, 1895, favor Atlantic Contracting Co., collected through Trust & Deposit Co., of Onandago, N. Y., Exhibit 227. Vol 31. $22,229.97

One-third of which is $7,409.99.

For deposit see Division No. 30. Post P. 754

DIVISION NO. 30 (SEPTEMBER, 1895), EXHIBIT 319. Vol 30

(O. M. Carter was in Europe July 10th to September 28, 1895, and G. W. Goethals disbursed from Washington for him in his absence (Wyman Vol. 3), p. 1337.) Vol 13 P 6148

Disbursing Check.

Check G. W. Goethals, Sept. 3rd, favor Atlantic Contracting Co., collected through Trust & Deposit Co. of Onandago, N. Y. Exhibit 227 . . Vol 31 . . . . . $409.80

One-third of which is $136.60.

Contemporaneous Currency Deposits.

(Westcott in Europe.)

1895		
Oct. 9,	Deposit to credit of O. M. Carter's individual account with Reed & Flagg, Exhibit 238, currency Vol 31	$33,000.00
Oct. 10,	Do, Currency Exhibit 238 Vol 31	16,000.00
Mch. 30, 1896	" Bills to credit of O. M. Carter Individual a/c with Union Trust Co. Exhibit Vol 31	3,500.00
		$52,500.00

Balance of Third Previously Unaccounted for.

1895		
Apr. 8,	Unaccounted for Division No. 25 . . . . Amb 694	$6,056.25
May 22,	Unaccounted for Division No. 26 743	9,170.02
June 7,	Unaccounted for Division No. 27 746	9,318.81
July 5,	One-third from Division No. 28 752	45,605.69
Aug. 5,	One-third from Division No. 29 753	7,409.99
Sept. 3,	One-third from Division No. 30 . . . . above	136.60
		$77,697.36
Deposited Division 28 as above	$14,500	
Deposited as above	52,500	67,000.00
Deposit not yet made		$10,697.36

(R. F. Westcott in Europe.)

Insurance policy No. 743,543, $10,000 Equitable Life Assurance Society.

1895
July 10, Check R. F. Westcott. O. M. Carter, Attorney, for first premium, Exhibit 67, 254 . Vol. 31 . . . . . $453.00

Port Savannah or Hunting Island Property.

1895
Purchase of interest in Carter's name.

July 5,	Check O. M. Carter, pr. J. W. O. Sterly, Attorney, Exhibit 447 and 533 Vol. 29	$100.00	
July 13,	Do Exhibit 447 534 Vol. 29 . . .	3,200.00	
Aug. 5,	Do Exhibit 447 535 Vol. 29 . .	1,200.00	
			$4,500.00

These payments were made from a sum of $5,000 withdrawn from the R. F. Westcott, O. M. Carter, Attorney, account, July 1, 1895, by check, and deposited in Southern Bank State of Georgia, subject to check O. M. Carter, J. W. Sterly, Attorney. Vol 31 See Exhibit 67 and Carter's cross-examination Vol. 13 p 6159-60 (Wyman Vol. 31), p. 1354.

Additional Payments.

1895

P. 755. Note

Carter testified, Vol. 13, p. 6159-60 that the $5,000 was transferred by him to the credit of Sterly, atty., in the So. Bk. State of Ga., to pay for the Hunting Island subscription. That Sterly paid out of it the above $4,500 for that purpose, and that Carter accounted to Westcott for the balance of it as shown on Dft. Exh. 96F. Turning now to Dfts. Exh. 96F (Vol. 20, p. 9578), it will be seen that Carter charges himself Oct. 1, 1895, with the $500 unexpended balance received back from Sterly and charges Westcott on Oct. 26, 1895, with the $420 paid on the Hunting Island investment by Carter's check on Mer. Nat. Bank. This was, therefore, merely an exchange of funds, and is the same in effect as if this payment had been made directly out of the $5,000 fund.

On Mch. 2, 1896, Carter deposited to his own credit in Union T. Co. coupons from bonds bought in Divisions 9 and 25 (Ex. 320, Vol. 29) $925.

The check drawn by Carter Feby. 29, 1896, $250, was not paid until Mch. 3, 1896, as shown by Exh. 252 (Vol 29).

The other check of Apl. 17, 1896, drawn on this account for Hunting Island was for $146.66 396.66

Both these payments were from the trust fund therefore.

Balance of above trust fund to Carter's credit U. T. Co. $528.34

Carter claims that this purchase of an interest in the Port Savannah property was made by him for Mr. Westcott, while the latter was in Europe (Wyman Vol. 3), p. 1354. He admits the stock was taken in Carter's name (Wyman Vol. 3), p. 1304.

Carter claims he delivered the stock certificates to Mr. Westcott when the latter returned from Europe. He does not claim to have assigned the certificate (Wyman Vol. 3), p. 1305. It is not mentioned in the receipt of October 29, 1897. He says he received it back some time in the Summer of 1898 from R. E. Westcott among other papers and he concludes that R. F. Westcott made him a present of it (Wyman Vol. 3), pp. 1305-1306.

Collection of Dividends.

There were no dividends collected by any one on the Hunting Island investment.

Disposition.

The proceeds, $6,500, tied up in Receiver's hands, in *U. S.* v. *O. M. Carter,* at Savannah.

Spring Island, S. C., Loan.

1895		
Nov. 14,	Check No. 133, R. F. Westcott, O. M. Carter, Attorney, favor Wm. Elliott, Attorney, Exhibits 67, 254	$3,780.00
Nov. 22,	Check No. 137, R. F. Westcott, O. M. Carter, Attorney, favor A. Minis, Exhibits 67, 254.	2,220.00
		$6,000.00

See stub entries as to loan, Exhibit 67.

Carter admitted the papers were made out in his name (Wyman Vol. 3), p. 1361.

Carter claims to have made this loan for R. F. Westcott (Wyman Vol. 3), pp. 1359-1361.

The loan was made to Thomas Martin, and the Martin note is mentioned in Receipt of October 29, 1897, and Carter claims Mr. Westcott made him a present of it at that time (Wyman Vol. 3), p. 1362

Disposition.

The proceeds of this note are tied up in Receiver's hands in Savannah, in *U. S.* v. *O. M. Carter, et al.*

Collection of interest on the Thos. Martin note credited O. M. Carter's individual account in Merchants National Bank, Savannah, December 8, 1896, Exhibits 58-322-320, $422.99.

Brush Electric Stock.

1895
Oct. 5, Purchase 23 shares of Brush Electric stock in name of O. M. Carter. Paid for by check Oct. 5, 1895, R. F. Westcott, O. M. Carter, Attorney, Exhibits 67, 254..... $1,391.50

Carter claims he bought the Brush Electric stock for Mr. Westcott though he took the stock in his name and then Mr. Westcott made him a present of it when Carter met him in Europe or afterwards, he does not remember (Wyman Vol. 3), pp. 1301-2.

That he gave it back to Mr. Westcott in May, 1897, and that was how Mr. Westcott happened to have it and he supposed Westcott intended him to have because he found it among the papers in possession of R. E. Westcott in Summer of 1898 (Wyman Vol. 3), pp. 1302-3.

Disposition.

For collection of dividends and final disposition, see Division 27.

POOR COPY

Delaware & Hudson Stock.

Delaware, Lackawanna & Western Stock.

Purchased in account of O. M. Carter, through Reed & Flagg, Exhibit 238, certificates in name of O. M. Carter:

1895

Oct. 8, 200 shares Del. & Hudson stock.....	$26,425.00
Oct. 8, 100 shares Lack. & Western stock.....	8,456.25
Oct. 9, 100 shares Lack. & Western stock.....	8,456.25
Oct. 10, 200 shares Lack. & Western stock.....	16,943.75
	$60,281.25

Paid for by:

Oct. 8, Check R. F. Westcott, O. M. Carter, Attorney, No. 107...	$10,000.00	
Oct. 9, Currency deposit (above).....	33,000.00	
Oct. 10, Currency deposit (above).....	16,000.00	
Oct. 10, Check R. F. Westcott, O. M. Carter, Attorney, No. 110..	1,283.67	
	$60,283.67	
Less interest charged	2.47	
	$60 281.25	

Carter's Orders For Above Stock.

See letter of O. M. Carter, October 4, 1895, to Reed & Flagg, ordering the above Del. & Hudson stock and the Del. Lackawanna & Western stock and directing certificates be issued in his name, Exhibit 339.

See certificates of Delaware & Hudson stock in evidence, Exhibits 342, 343.

Collection of Dividends.

Carter collected all the dividends on the above stock as per Exhibit 251, as follows:

Statement of account, R. F. W., O. M. Carter, atty., with trust fund in Union Trust Co.:

July 10, 1895.	Balance of trust fund in U. T. Co. (*ante*, p. 752)		$13,122.97
July 16, 1895.	Deposit 8th avenue rent (Exh. 589, Vol. 29)		257.00
Aug. 20, 1895.	Deposit 8th avenue rent (Exh. 598, Vol. 29)		109.26
Sep. 30, 1895.	Deposit 8th avenue rent (Exh. 589, Vol. 29)		175.00
Oct. 9, 1895.	Deposit 8th avenue rent (Exh. 589, Vol. 29)		346.26
Oct. 10, 1895.	Deposit coupons (Exh. 589, Vol. 29)		4,637.50
Nov. 1, 1895.	Deposit coupons (Exh. 589, Vol. 29)		1,687.50
Nov. 6, 1895.	Interest credited		48.55
Nov. 13, 1895.	Deposit, balance letter credit purchased, *ante*, p. 752 (Exh. 589, Vol. 29)		756.08
Nov. 14, 1895.	Deposit 8th avenue rent (Exh. 589, Vol. 29)		200.00
Dec. 5, 1895.	Deposit coupons (Exh. 589, Vol. 29)		1,350.00

Carter testified (Vol. 14, pp. 6196–7), that while he was in Europe he met R. F. Westcott and let him have $3,000 out of the letter of credit purchased (*ante*, p. 752). He has no other evidence of this but a diary entry.

The analysis of his "C" and "W" balances show that shortly after Carter's return from Europe he did apply "c" column the following deposits of Westcott's rents and income:

Oct. 28, 1895.	Deposit by J. B. Solly (Exh. 589, Vol. 29)		691.66
Nov. 25, 1895.	Deposit by J. B. Solly (Exh. 589, Vol. 29)		90.00
			$23,471.78

Withdrawals, per Exhibit 589, Vol. 29:

Oct. 8, 1895.	Check to Reed & Flagg, dated Oct. 4, 1895, on Del. & Hud. & Del., Lack. & W. stock	$10,000.	
Oct. 10, 1895.	Check to Reed & Flagg, dated Oct. 9, 1895, balance on Del. & Hud. & Del., Lack. & W. stock	1,283.67	
Oct. 5, 1895.	Check for Brush stock (*ante*, p. 757)	1,391.50	
Oct. 19, 1895.	Check for taxes 8th avenue	278.95	
Nov. 14, 1895.	Check, dated Nov. 7, '95, for Spring Island investment (*ante*, p. 756)	3,780.00	
Nov. 22, 1895.	Check, dated Nov. 21, '95, for Spring Island investment (*ante*, p. 756)	2,220.00	
Oct. 2, 5, 11, 12, 17, 19, 23, 25, Nov. 2, 5, 6, 9, 14.	Checks drawn for personal uses (Ex. 589)	$2556.05	
	Less personal checks deposited	36.47	
		2,519.58	21,473.70
Balance trust fund in Union T. Co. Dec. 5, 1895			$1,998.08

Delaware & Hudson Stock.

December 16, 1895; March 16, 1896; June 15, 1896; September 15, 1896; December 15, 1896; March 15, 1897; June 15, 1897.

Delaware, Lack. & Western Stock.

January 20, 1896, April 24, 1896; July 20, 1896; October 21, 1896; January 20, 1897; April 20, 1897.

FINAL DISPOSITION.

Delaware & Hudson Stock.

Sold by L. L. Kellogg, Carter's Attorney, through Kendall & Whitlock, November 23, 1897, for $21.875. Exhibit 344.

Carter admits that he testified before the Court Martial that Mr. Westcott had sold the Del. & Hudson stock, and denied that he had, but he now says that was a mistake (Wyman Vol. 3), pp. 1349-50. *

Delaware, Lackawanna & Western Stock.

Sold by R. F. Westcott through Reed & Flagg, July 6, 1897, for $31,525.00 and re-invested in Orange, N. J., property.

ADJUSTMENTS BETWEEN WESTCOTT AND CARTER, FEB. 4, 1895, TO MAY 11, 1896.

EXHIBIT 589.

R. F. Westcott sailed for Europe January 29, 1895 (Wyman Vol. 3, pp. 1237-8). Before he left for Europe, certain coupons maturing February 1 and 2, 1895, aggregating $2,300, from the Division securities were deposited by Westcott in the Union Trust Company and credited to the R. F. Westcott account February 1 and 2, 1895. (See *ante*, pp. 730 and 732.) Carter took the balance, $9,102.72, as it stood on the

P. 759. Note

*Notwithstanding that the fact of his own receipt to Westcott for this stock on Oct. 29, 1897, and the sale of it for Carter on Nov. 23, 1897, by Kellogg must have been then fresh in his mind. Carter testified before the Court Martial that Westcott had sold this stock, and denied that he had. (Vol. 8, p. 4077, 4079, 4073.)

bank books, Exhibit 441, on February 4, 1895, on the R. F. Westcott, O. M. Carter, Attorney check book, Exhibit 67, the entries in which Carter made until May 11, 1896. R. F. Westcott returned from Europe May 11, 1896. (Wyman Vol. 3), p. 1366.

For the adjustment of the transactions between R. F. Westcott and O. M. Carter up to February 4, 1895, see *ante*, pp. 730 to 732.

It was shown by that adjustment that, besides the special loan of $10,000, which had been made by Carter to Westcott, secured by the assignment to Carter, by Westcott, of the Adams, Grant and Zippel mortgages, which Westcott did not repay until August 20, 1896, some months after Westcott had returned from Europe; that at the time Westcott went to Europe, and after transferring to Carter the balance of $9,102.72 in the bank account of R. F. Westcott; that Westcott still owed Carter on open account $5,334.78. (See *ante*, p. 732.)

Exhibit 589.

Mr. Edward I. Johnson has taken up those balances on Exhibit 589, and carried forward therein the adjustments from February 4, 1895, to May 11, 1896, when Westcott returned.

Powers of Attorney.

During the period from February 4, 1895, to May 11, 1896, while Westcott was in Europe, Carter had complete control of the R. F. Westcott bank account in the Union Trust Company, under power of attorney, deposited in the bank, dated January 7, 1895, Complainant's Exhibit 270 (Wyman Vol. I), p. 278. This was a limited power of attorney, allowing Carter to deposit or withdraw funds. But as we have already seen there was nothing in that bank account when Westcott went away, except Carter's own money. Carter also claims that he had plenary powers given him by Mr. Westcott to transact all Mr. Westcott's business in the latter's absence,

under another power of attorney given him by R. F. Westcott and wife, dated January 17, 1895, Complainant's Exhibit 271 (Wyman Vol. 1), p. 281.

The Purpose of the Powers of Attorney.

That Carter used these powers of attorney for purposes far beyond the purpose for which they were given him, is apparent from the following facts. R. F. Westcott owned at that time a considerable amount of unimproved real estate at Orange, Essex County, New Jersey. Westcott had himself, in February and March, 1893, sold off some of those Orange, New Jersey, lots, *ante*, p. 610.

It also appears, that subsequent to Westcott's return from Europe, he sold a half interest in certain of the remaining lots to O. M. Carter, in 1897, under an agreement to improve the lots, and share equally. (See Exhibit 283 (and *post*, p. 787.)

When Westcott went to Europe in January, 1895, he left in Carter's hands, powers of attorney authorizing Carter to sell off these unimproved lots, deposit the proceeds, if sales were made, in the R. F. Westcott account in the Union Trust Company, and to withdraw therefrom the deposits and invest the proceeds in bonds.

As a matter of fact Carter made no sales of Westcott's real estate, possibly because Westcott may have put his figures too high.

That that was the main purpose of the powers of attorney is shown from the terms of the general power of attorney, Exhibit 271 (Wyman Vol. 1), p. 281, the provisions of which are:

Scope of Power of Attorney.

(1) Power is conferred on Carter to make sale or lease any real estate which Westcott or wife owned in Essex County,

New Jersey, or Otsego County, New York, and to execute deeds to the purchasers.

(2) Power is conferred on Carter to rent or lease any other real estate owned by R. F. Westcott or wife, and to collect rents from any of the property of Westcott or wife.

(It appears that R. F. Westcott did own certain real estate in New York City, and that Carter did collect these rents in Westcott's absence and apply them to wiping the balance of the $5,334.78 which Westcott went away owing Carter on open account, and accounted to Westcott on Westcott's return May 11, 1896, for a surplus of $6,436.66 (*ante*, p. 726).

(3) Power is conferred on Carter, to sell any bonds then owned by Westcott or wife and in his discretion to buy bonds.

(4) Power is conferred on Carter to collect interest on bonds and mortgages and debts due Westcott or wife.

(R. F. Westcott testified he owned no bonds when he went to Europe January 29, 1895 (Shields Vol. 2), p. 1115. Mr. Johnson has made up a statement, Exhibit 587 (Wyman) from R. F. Westcott's accounts from January 1, 1890, to November 1, 1897, showing what securities Westcott owned at each period, Exhibit 587 (Wyman Vol. 11, Binder A), from which it appears Westcott owned no bonds in January, 1895. This does not include the bonds purchased in the Divisions, Exhibit 319, and which the defense claims were Westcott's.)

(Westcott, however, did own certain mortgages which he transferred to Carter to secure the $10,000 loan made him by Carter, and from which Carter collected and used the interest, not only during Westcott's absence, but after Westcott's return until August 20, 1897, when Westcott paid back to Carter the loan and Carter reassigned the $10,000 mortgages, see *ante*, pp. 728-725.)

(The documentary evidence is borne out by Westcott's statement (Shields Vol. 2), pp. 1116-1117, that this power to sell real estate, and buy and sell bonds was intended to give

Carter the power to invest and change investments of the proceeds of sales of Orange, New Jersey, real estate, etc., if Carter made such sales.)

How Carter Used the Powers of Attorney.

Carter employs J. B. Solley (father of Dr. Solley). Vol 12 P 6107
Carter testified, cross-examination (Wyman Vol. 3), p. 1271:

"Q. Now, Mr. Westcott had certain matters of collections of rents of his own individual property and similar collections in the hands of J. B. Solley when he went to Europe in January, 1895, and Mr. Solley collected those matters and deposited them in the Union Trust Company, of New York, in the account of R. F. Westcott, on which you had power of attorney; that is correct, isn't it?

A. No, I do not think he did that when Mr. Westcott went away. *I think it was at my request that he did that afterwards;* but he did make certain deposits, I have forgotten just what, the deposit slips themselves will show what he made, but I know the care of a great deal of the property was turned over by me later, after Mr. Westcott left."

Vol 12 P 6108
(Wyman Vol. 3) p. 1278:

"Q. I thought you stated awhile ago that you were the one who made the arrangement with Mr. Solley about looking after these things for Mr. Westcott?

A. I did; you see Mr. Solley was living in Mr. Westcott's house. I have forgotten, either Mr. Westcott or myself told him that he was to take down anything and deposit it, and later I asked Mr. Solley to take care of some of this because I could not very well attend to it, being in the South."

Now the deed from Westcott to Carter for the Eighth avenue New York property, which was purchased through J. F. Bragg, a real estate agent, in Divisions Nos. 19 and 20 (*ante*, pp. 713 and 718), is in evidence, Exhibit 276, and is dated January 17, 1895, but was not recorded until June 21, 1897. When, therefore, Westcott went to Europe, the legal as well as the equitable title was in Carter.

Carter Has Bragg Turn Over Eighth Avenue Rents to J. B. Solley for Deposit in the R. F. Westcott, O. M. Carter, Attorney, Account.

Carter testified under cross-examination as to a deposit of $267.99 made on February 16, 1895, in the R. F. Westcott, O. M. Carter, Attorney, account, per J. B. Solley, in the Union Trust Company (Wyman Vol. 3), p. 1277:

"Q. Mr. Westcott was in Europe at that time, and you got the amounts in Mr. Westcott's account for the Eighth avenue rents, did you not?

A. I have no doubt that this is the same. I am just simply saying, at this date, without seeing it I would not like to state it positively because it may be in some other account the same, but I have no doubt it is; it appears the same and I know I told Mr. Solley later to look after some of the Eighth avenue affairs, and this undoubtedly is the same check.

Q. I hand you Mr. Bragg's check which is attached to Exhibit 420 in this case, the original check; it is payable to the order of R. F. Westcott, dated February 9, 1895, for $267.99 and on the back of it is the endorsement 'For deposit to credit of R. F. Westcott, per J. B. Solley?'

A. That is correct.

Q. That is Mr. Solley's handwriting on it?

A. Yes, sir.

Q. Now, at that time the 8th avenue property was yours, at the time February 16, 1895?

A. That is right.

Q. Now, on March 11, 1895, Exhibit 253, the same account shows deposit by Mr. Solley in that account of $1,533.33, which includes an item of $250. I will ask you if that $250 was not also a collection of the 8th avenue rent?

A. Yes, sir, it was.

Q. And on April 24, 1895, there was a deposit by Mr. Solley to the credit of that account of R. F. Westcott, O. M. Carter, attorney, of $1,705.66 one of the items of the deposit being $225. I will ask you if that last item $225 was not also a deposit of the 8th avenue rent?

A. It was.

Q. At this time that 8th avenue property was yours?

A. It was."

Dobbs' Mortgage Belonging to Westcott Collected by Carter.

Mr. H. D. Dobbs testified (Wyman Vol. 9), p. 4572, that he owed a balance to R. F. Westcott of $2,000 on purchase of real estate in Orange, New Jersey, made March 30, 1893, for which he gave Mr. Westcott a mortgage. Carter collected the balance due on this mortgage April 9, 1895, and deposited it in the R. F. Westcott, O. M. Carter, Attorney, account. Carter testified under cross-examination (Wyman Vol. 3), p. 1279:

"Q. On April 9, 1895, there was a deposit in that account by yourself of a check for Dobbs' mortgage, $2,050; that was a collection of the Dobbs' mortgage to which you have already referred in your testimony this morning, was it not?

A. It is.

Q. That was one of Mr. Westcott's mortgages?

A. Yes, sir."

Deposit of $600 of Mr. Westcott's from American News Company.

Carter was questioned about another item of deposit of $600 made in the R. F. Westcott, O. M. Carter, Attorney, account, on March 15, 1895, and testified (Wyman Vol. 3), p. 1279:

"Q. On March 15th, the American News Company, $600. That was a collection on Mr. Westcott's account, was it not?

A. It was."

Carter Makes Monthly Remittances to Certain of Mr. Westcott's Relatives.

On Exhibit 67, the R. F. Westcott, O. M. Carter, Attorney, check stub book, and from Exhibit 254, the bank account, it appears that while Westcott was in Europe, Carter made monthly remittances of fixed allowances to certain of Mr. R. F. Westcott's relatives. The first remittance, February 28, 1895, was as follows:

Feb. 28, 1895,	R. W. Westcott, for March	$66.66
	E. S. Westcott, for March	50.00
	E. A. Westcott, for March	83.33
	Mary E. Decker, for March	83.33
	Harriet Westcott, for March	83.33
		$366.65

Carter testified as to the above under cross-examination (Wyman Vol. 3), p. 1280:

"A. I do not know who any of these are, Mr. Erwin, except I knew they are relatives of Mr. Westcott. I think some were his brothers and others were some relations, but just which was which I could not tell.

Q. All five of them?

A. Yes, sir.

Q. The aggregate of these five checks is $366.65; then on April 1st there were some other checks issued to the same amount, to the same parties, $366.65; these were the same people?

A. Yes, sir.

Q. And on April 30, there were some other checks issued aggregating $366.65; these checks were issued to the same parties, by you?

A. Yes, sir."

How Westcott Stood May 1, 1895.

We are now prepared to state just how Mr. R. F. Westcott's balance in the R. F. Westcott, O. M. Carter, Attorney, account stood on May 1, 1895. We reach the result by giving Westcott credit for all rents collected by J. B. Solley and deposited in the R. F. Westcott, O. M. Carter, Attorney, account, except the 8th avenue rent, which Carter admits was Carter's. We also give Westcott credit for the collection of the Dobbs' mortgage, $2,050, and the American News Company collection, $600, which Carter admits were Westcott's. We charge Westcott with the monthly remittances made by Carter of $366.65 to Westcott's relatives which Carter admits are chargeable to Westcott. The difference will show the net col-

lections made by Carter for Westcott over the disbursements made for Westcott by Carter; if from this we subtract the balance of $5,334.78 due by Westcott to Carter, February 4, 1895, it will leave how much of Westcott's remained in the bank May 1, 1895.

The statement of the account shows as follows:

Adjustment Between Westcott and Carter February 4 to May 1, 1895.

(Per Exhibits 253 and 254, bank account, Exhibit 67, check stub book). Deposits account R. F. Westcott.

1895			
Feb. 8,	Deposit per J. B. Solley.....		$975.00
Feb. 16,	Deposit per J. B. Solley.....	$1,401.32	
	Less 8th Avenue, Carter's rent, Exhibit 523 Vol. 29.	267.99	1,133.33
Mar. 11,	Deposit per J. B. Solley.....	1,533.33	
	Less 8th Ave., Carter's rent, Exhibit 524 Vol. 29.....	250.00	1,283.33
Mar. 15,	Deposit American News Co...		600.00
Apr. 9,	Deposit Dobbs Mortgage collection.....		2,050.00
Apr. 24,	Deposit per J. B. Solley.....	1,705.65	
	Less 8th Ave. Carter's rents Exhibit 524 Vol. 29.....	225.00	1,480.65
Apr. 29,	Deposit per J. B. Solley....		116.67
Carried forward	Total deposits a/c R. F. Westcott.....		$7,638.98

Brought forward Total Deposits 1895 R. F. Westcott $7,638.98

Disbursements Account Westcott.

1895			
Feb. 28,	Carter's checks Nos. 1, 2, 3, 4 & 5, favor Westcott's relatives	$366.65	
Apr. 1,	Carter's checks, favor of Westcott's relatives	366.65	
Apr. 30,	Do.	366.65	$1,099.95
	Net collections over disbursements		$6,539.03
	Less balance due Carter by Westcott Feb. 4, 1895, on open account (*ante*, p. 732)		5,334.78
1895			
May 1,	Balance due R. F. Westcott of amount in bank		$1,204.25

See Carter's entry on check stub book, Exhibit 67. Vol. 31

"Bal. May 1, 1895 $26056.08
May 1 =24851.83 = A
" " = 1204.25 = B "

Deposits in R. F. Westcott, O. M. Carter, Attorney, account Carter's funds.

1895.		
Feb. 4,	Bank balance Union Trust Co. transferred to Carter by Westcott in settlement, (*ante*, p. 732), Exhibit 67	$9,102.72
Feb. 16,	Deposit per J. B. Solley, 8th Avenue rent as above	267.99
Mar. 5,	Deposit by O. M. Carter, coupons, Ex. 67: 10 United New Jersey. 10 Delaware & Hudson	550.00
Mar. 7,	Deposit by O. M. Carter, Exhibit 253, and see Division 24, bills	20,000.00
Mar. 7,	Deposit by O. M. Carter in Union Trust Co. check of Reed & Flagg from sale of securities, Exhibits 253 and 239	16,025.00
Mar. 11,	Deposit per J. B. Solley, 8th Avenue rents as above	250.00
Mar. 13,	Deposit check of Reed & Flagg from sale of securities	93.75
Apr. 24,	Deposit per J. B. Solley, 8th Avenue rents as above	225.00
	Footing	$46,514.46
Feb. 4, 1895,	bal. due by Westcott to Carter on open account, now paid back as above	5,334.78
	Balance carried forward	$51,849.24

	Balance brought forward.....		$51,849.24
	Deduct:		
	Payments Feb. 4 to May 1, 1895, by checks R. F. Westcott, O. M. Carter, Attorney, drawn for Carter's personal expenses per Exhibits 67, 254, 294. Vol 21 Vol 29		
1895			
Mar. 1,	Check No. 6	$50.00	
Mar. 2,	Checks 7 to 8	132.50	
Mar. 12,	Checks 9 to 13	221.78	
Apr. 1,	Check 20.....	250.00	
Apr. 2,	Check 21	50.00	
Apr. 5,	Checks 22 to 26	299.54	
Apr. 8,	Check 28	700.00	
Apr. 18,	Checks 30 to 31	37.35	
Apr. 24,	Check 32	25.32	
Apr. 27,	Check 38	98.00	
Apr. 30,	Checks 39 to 40	400.00	
		$2,264.49	
	Check R. F. Westcott, O. M. Carter, attorney, to pay for securities bought:		
1895			
Mar. 21,	Check to Reed & Flagg, 10 United N. J. (Division 24)	$11,126.67	
Apr. 8,	Check to Reed & Flagg, 5 N. Y. Lack. & W. (Div. 25)	6,650.00	
Apr. 9,	Check to Reed & Flagg, 5 Del. & Hudson (Div. 25)	6,956.25	$26,997.41
	May 1, 1895, Bal. due Carter of amount in bank..		$24,851.83

See Carter's stub entry above:

"May 1 = 24851.83 = A"

Further Adjustments.

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In Exhibit 589, the analysis of the check stub book kept by Carter of the R. F. Westcott, O. M. Carter, Attorney, account, Mr. Johnson has shown how by pursuing the same course as above, viz., by treating Westcotts' rents as Westcott's, and those other items shown to be Westcott's, as Westcott's, and treating all these great deposits of currency in the account, made contemporaneous with the Greene & Gaynor divisions as

Carter's, and treating all deposits of coupons from the "Division securities" as Carter's, and treating all expenditures made by Carter to his own relatives or for his personal expenditures, as Carter's, that the separation of the bank balances as Carter separates them at stated periods into "A" and "B" and finally into "C" and "W" is fully accounted for.

In other words, that Carter used at first "A" to represent what part of the balance was Carter's; "B" to represent what part of the bank balance was Westcott's, and later used "C" to represent what part of the bank balance was Carter's and "W" to represent what part of the bank balance was Westcott's.

Dates Where Balances Shown by Exhibit 589 *Exactly Agree with "A" and "B" and with the "C" and "W."*

May 1, 1895. See Carter's stub book entries.
Oct. 25, 1895.
Dec. 5, 1896.
Feb. 1, 1896.
Mar. 1, 1896.
Apr. 1, 1896.
May 11, 1896.

In the balances stated in the "A" and "B" and in the "C" and "W," Mr. Johnson is unable to account for the following differences by any Exhibit:

June 13, 1895, *difference*—$60.00.

This was probably interest collected by Carter in cash on one of the mortgage notes he acknowledges he held on assignment from Westcott.

June 27, 1895.

Mr. Johnson has not attempted to strike a balance on Exhibit 589 on June 27, 1895, because it appears Carter made some slight error in his "A" and "B" separation of the fund in bank at that point. Carter evidently discovered this when he made his next "C" and "W" separation of the bank balance October 25, 1895, and corrected it; for by ignoring the separation into "A" and "B" June 27, 1895, the Westcott and Carter items run through from May 1st to October 25, 1895, exactly reach the "C" and "W" amounts stated on the check stub book October 25, 1895, to a cent.

January 1, 1896. *Difference,* $174.00.

This probably arose from the collection of the semi-annual interest on the Zippel and Adams mortgage notes, which had been assigned to Carter by Westcott (*ante*, p. 725), the collection of which Carter fails to mention on his stub books.

The semi-annual interest on the Zippel and Adams mortgages were due at stated periods as follows:

Zippel interest due October 1st, $100, and Apr. 1st, $100.

Adams interest due Oct. 1st, $75, and Apr. 1st, $75.

(See Wyman Vol. 3) pp. 1236-7.

After Westcott returned from Europe, he remitted Carter $175 on May 29, 1896, for the April 1, 1896, interest on these above mortgages. (Carter's cross-examination, Wyman Vol. 3) p. 1236. Carter, however, fails to mention on his stub book the collection of the October 1, 1895, interest on these two mortgages, which were probably collected before January 1, 1896, by J. B. Solley. There is a letter from Carter to Solley on the subject of collecting interest on the Zippel and Grant mortgage November 29, 1895. Complainant's Exhibit 475 (Wyman Vol. 1), p. 215, and in Solley's deposit, December 9, 1895, in the R. F. Westcott account are deposits of two items, one

of $100 and the other of $75, which, with the allowance of $1 for cost of collection, would exactly make the $174 difference between the result reached by Exhibit 589 and the "C" and "W" balance January 1, 1896.

Differences Immaterial.

The only differences, $60 and $174 as above not accounted for definitely in Exhibit 589, the analysis of the check book by the exhibits, are immaterial, when it is considered that the entries in the stub book from February 4, 1895, to May 12, 1895, embrace transactions amounting to over $139,000.

Carter has attempted to make an analysis of his "A" and "B" and of his "C" and "W" entries also, Defendant's Exhibit 96-E. In this (page 51) Carter puts down this $174 as "Not found on check book, $174.00."

Criticisms by Defendant's Expert Accountant.

Defendant's expert, Mr. McPherson, has criticised the analysis made by Mr. Johnson, Exhibit 589, because of the $60 and $174 differences which we have referred to above and which Carter himself as we have seen, has admitted, exists but is not accounted for by reason of some missing entry on his stub book.

He also criticises the fact that Mr. Johnson has brought into the "C" column in Exhibit 589, commencing October 28, 1895, certain collections made by J. B. Solley from R. F. Westcott's rents.

In other words, that after October 28, 1895, something had happened which made Carter entitled to have Westcott's rents again. The items referred to are:

Oct. 28, 1895,	Deposit per J. B. Solley,.....	$691.66
Nov. 25, 1895,	Deposit per J. B. Solley,.....	90.00
May 9, 1896,	Deposit per J. B. Solley,.....	690.00

Just what had happened is shown by the following facts:

Before Carter left New York for Europe, he bought a $5,000 letter of credit on July 5, 1895, and paid for it by check on the R. F. Westcott, O. M. Carter, Attorney (Exhibit 67 and 589) account. He redeposited in the R. F. Westcott, O. M. Carter, Attorney, account, on November 13, 1895, after his return, $756.08, the balance of this letter of credit (Exhibits 67 and 589). Carter testified on cross-examination that of the $4,243.92 used out of the letter of credit, he himself used a part and he turned over to Westcott a part when he met the latter in Europe. (Wyman Vol. 3), pp. 1409-10. He has nothing to show just how much he turned over to Westcott except a diary entry presented for the first time in January, 1905. In this he states the amount turned over to Westcott was $3,000. That Carter was entitled to reimburse himself out of the Solley collections for the advances he made to Westcott when he met Westcott in Europe in summer of 1895 follows as a matter of course. We think the exact amount turned over to Westcott at that time is more accurately determined by the amount of Westcott's rents and note collection which Carter applied thereafter to himself, when he made the final settlement May 11, 1896, as hereafter referred to.

That Mr. Johnson correctly put the $691.66 there October 28, 1895, in the "C" column, is shown by the fact that Carter in his attempted explanation, Defendant's Exhibit 96-E, p. 50, also puts it in the "C" column.

The $90 item, November 25, 1895, which Mr. Johnson puts in the "C" column, was evidently a deposit by J. B. Solley from a collection of the November 1, 1895, semi-annual interest on the Grant mortgage, which had been transferred to Carter in January, 1895, as heretofore referred to. See letter of Carter to Solley, November 29, 1895, about the collection of this $90 interest on the Grant mortgage. Exhibit 475 (Wyman Vol. 1), p. 215.

The $690 item, May 9, 1896, which Mr. Johnson puts in the "C" column, was evidently a collection on account of the Grant mortgage, and semi-annual interest thereon.

Because Carter immediately draws a check No. 214, on the R. F. Westcott, O. M. Carter, Attorney, account, May 11, 1895, in favor of himself for $690 and marks the stub "Account of Grant mortgage $600 and interest $90." Exh 67 Vol 31

The Grant mortgage was evidently for $3,600 at the time Westcott transferred it to Carter in January, 1895, because it appears that after this payment of $600 as above, Carter writes to Grant July 31, 1896, stating that the amount of the mortgage then was $3,000. Exhibit 480 (Wyman Vol. 1) p. 221. Vol 1 p 252 48

The foregoing sufficiently answers the criticisms referred to.

CARTER'S EXPLANATION OF THE "A" AND "B" AND "C" AND "W."

Carter's explanation is that "B" and "W" represented money arising from Westcott's property "which Carter did not control," which got into the bank account and that "A" and "C" represented money arising from Westcott's property "which Carter did control," together with some of Carter's individual funds. And that by the use of these letters, he had no intention to indicate that Westcott was entitled to the "B" and "W" balances, and Carter to the "A" and "B" balances.

Carter admitted he stated before the Board (Wyman Vol. 3), p. 1273: Vol 1378 6405

> "Q. I now call your attention to your testimony before the Board of Inquiry on September 24, 1897, at pages 361 and 362, in which certain questions were propounded to you and certain answers were made as follows:

'Q. Captain Carter, I would like you to explain to the Board how you could make presents, amounting to $2,500 from this account, to your own relatives, and why it was necessary at the same time to divide the balance between yourself and Mr. Westcott? A. I had an account of his which came in from certain rentals and various things that Mr. Solley had possession of; then I had certain payments that I had made for various things; then I had that general account of Mr. Westcott's, for which I was responsible to him, and for our convenience and for determining my responsibility to him I divided it into two sets, then from this large account I drew out what I needed myself and the rest of it I invested; then from time to time I would write him what investments I had made and what my personal expenses were.'

That was your testimony before the Board of Inquiry, was it not?

A. Yes, sir; that is correct as far as it goes. I find there is one word omitted in there, but I do not know as it changes the sense. I find in this copy that I have it reads "the general total account of Mr. Westcott's," but it is in pencil, and whether this is agreed to or not, I don't know.

Q. What is in pencil?

A. The word 'total.'"

Carter further testified on the direct before the Examiner (Wyman Vol. 2), p. 15:

Vol. 12 p. 5216

"Q. In what way did you keep track of them on that stub book?

A. I marked down on that stub book under the heading of "A" or "C" *the business of his (Westcott) for which I was responsible,* and I included in that *also any items which belonged to me personally;* and under the heading "B" or "W" I marked down transactions *which came through other agents of his, and for which I was not personally responsible to him.*"

Vol. 12 p. 5362

(Wyman Vol. 2), p. 16:

"Q. Who transacted the other business of Mr. Westcott to which you referred?

A. Most of it was transacted by Mr. J. B. Solley.

Q. Who was he?

A. He was the father of Dr. Solley, who married Westcott's daughter.

Q. When Solley collected any rents or deposited any moneys to Westcott's credit in that bank account, how did you enter it on the check stubs?

A. When I did not have personal charge of this property I entered it under the head of "B" and "W" and when I had charge of it myself, I entered it under the head of 'A' and 'C.'"

Carter further explains in his direct testimony (Wyman Vol. 2), p. 252:

"Q. (By Mr. Stone.) What is the next item?

A. The next item is a deposit on April 24th (1895), of $1,705.65 made by Mr. Solley and consisting of ten items, I took out of that $225 which came from rentals on the 8th avenue property, which Mr. Westcott had given me, and put that in the 'C' column, and put all the rest of it in the Solley or "W" column *because between the period of March* 11, *and April 24th, I had transferred the control of these properties to Mr. Solley.*

Q. Were there any items in that $1,480.65 under the Solley column, as you call it, which prior to that time had been put in the 'C' column?

A. Yes, sir.

Q. And the reason that you first put them into the Solley column was because in the meantime *the control* of that *had been turned over by you to* Mr. Solley?

A. That is correct.

Q. The physical care of it?

A. Yes, sir."

Again, on the direct, Carter testified (Wyman Vol. 2), p. 239:

"Q. Did you have control over Mr. Solley or what he did in regard to matters in his hands, from which he made deposits in the bank?

A. I did not."

Contradicts Himself.

This evidence is contradicted by Carter's own testimony on cross-examination before the Examiner (*ante*, p. 763), in which he testified that he himself employed J. B. Solley shortly

after Westcott left for Europe, to collect and deposit Westcott's rents, and to collect and deposit Carter's rents from the 8th avenue property, and that Solley, as shown by the deposits made by him, proceeded to do so from February, 1895.

The Court will tax its ingenuity to discover from any evidence in the case, any difference between Solley's or Carter's "physical control," of the Westcott real estate which took place between March 11 and April 24, 1895.

The reason for Carter's changing the deposits of Westcott's rents which he appropriates to the "C" column prior to April 24, 1895, into the "W" column, after that time, is simply this: that on April 24, 1895, the Westcott deposits had reached an amount sufficient to wipe out the $5,334.78 due Carter by Westcott on open account (*ante*, p. 768, and Exhibit 589), so that after that time the Westcott rents belonged to Westcott.

No Useful Purpose Subserved by Carter's Theory of Physical and Ethical Control.

No conceivable useful purpose could have been subserved by dividing the balance, into two parts respectively, representing "Physical" and constructive control by Carter of the properties from which the money came. Carter had the complete control over the whole bank balance, and he exercised it by his power of attorney. No difference is discoverable in the nature of his control over Westcott's property or rents before and after April 24, 1895.

Carter Admits Spending $17,039.87 *from "C" Fund in* 1895.

He admits that in the "C" column as he now figures it out, he includes what he admits were his own private funds, and all of the currency deposits which went into the account con-

temporaneous with the Greene & Gaynor divisions and all coupon collections between February 4, 1895, and May 12, 1896, and that he charged to the "C" column, and spent for his individual purposes out of this "C" fund between January 29, 1895, and December 31, 1895, $17,039.87. Defendant's Exhibit 96-F, pp. 31-32.

Also from the same fund from January 1, 1896, to May 12, 1896, which he aggregates with coupons, etc., collected by him after January 1, 1896, to December 31, 1896, he squares off the account by another alleged gift of $18,000 to him December 31, 1896. Defendant's Exhibit 96-F, p. 39. And see Carter's cross-examination (Wyman Vol. 3), pp. 1407 to 1411 and 1458.

FINAL SETTLEMENT MAY 11, 1896. EXHIBIT 589.

One of the most convincing facts shown by the Carter entries on the R. F. Westcott, O. M. Carter, Attorney, check book, that the use of the letters "A" and "B" and "C" and "W" in separating the bank balances, was intended to separate what belonged to Carter from what belonged to Westcott, is shown by the final settlement May 11, 1896, when Westcott returned from Europe.

Carter fixed the bank balance to correspond with what Westcott was actually entitled, by making that balance good by a deposit in the R. F. Westcott, O. M. Carter, account of Carter's check on his individual account May 6, 1896, for $144.84. This is shown as follows:

Carter's stub entry April 1, 1896, Exhibit 67 is as follows:

"Balance April 1, 1896 $5131.82
W = 5076.66
C = 55.16

5131.82 "

We will start with those balances as they are stated by Carter on the R. F. Westcott, O. M. Carter, Attorney, account, April 1, 1896, and bring in every entry on the stub book to May 11, 1896, under the appropriate head of "C" or "W."

Carter's Balances.

1896		"C" Debit.	"C" Credit.
Apr. 1,	Balance in bank		$55.16
Apr. 6,	Check favor O. M. Carter cashed	$200.00	
Apr. 6,	Balance		184.84
		$200.00	$200.00
Apr. 6,	Balance brought down overdrawn by "C"	144.84	
May 6,	*Check O. M. Carter on his individual account* deposited in the R. F. Westcott, O. M. Carter, Atty., account, Exhibits 67, 253 Vol 31.....		144.84
		$144.84	$144.84
May 9,	Deposit J. B. Solley $1,139.99 of which $690 on account of collection on Grant mortgage assigned by Westcott to Carter (*ante*, p. .....)		$690.00
May 11,	Check favor O. M. Carter, "a/c Grant mortgage,".... Exhibits 67 Vol 31	690.00	
		$690.00	$690.00

R. F. Westcott's Balances.

1896		"W" Debit.	"W" Credit.
Apr. 1,	Balance in bank.....		$5,076.66
Apr. 6,	Deposit J. B. Solley		1,176.66
Apr. 13,	Check favor J. B. Solley "for Richfield House a/c R. F. W."	$25.00	
Apr. 18,	Deposit J. B. Solley.....		225.00
Apr. 18,	Check favor J. B. Solley for "Daisy" (R. F. W.'s daughter)	100.00	
May 1,	5 checks to R. F. Westcott's relatives	366.65	
May 9,	Deposit J. B. Solley $1,139.99 Less collection Grant mortgage, see above 690.00		499.99
May 11,	Balance	6,436.66	
		$6,928.31	$6,928.31
May 11, 1896,	Bal. brought down		$6,436.66

Confirmation.

Carter's entry on stub books, Exhibit 67: Vol 31

"Bal May = 6436.66
Transferred back to R. F. W.
on that date
O. M. C."

This balance is also the balance with which R. F. Westcott opens his new stub book, Exhibit 563, on his return from Europe.

"Balance May 11, 1896, $6436.66."

DIVISION NO. 31 (MAY 12, 1896), EXHIBIT 319. Vol 30

* *R. F. Westcott Returned from Europe, May* 11, 1896 (*Wyman Vol.* 3), p. 1366. Vol 3 p 1364-8

Carter in New York, May 12, 1896, *and Makes False Report of His Whereabouts.*

This is shown by Exhibit 251. Carter admits his presence in New York, May 12, 1896, and that he did not report his absence from his station (Wyman Vol. 3), p. 1366. Vol 31 Vol 3 p 1367-8

Deposit of Disbursing Checks.

Deposit in American Exchange National Bank:
1896.
May 12, Carter's disbursing checks deposited to credit of B. D. Greene, Exhibit 240, Vol 31 ... $ 24,175.31
Less:
Check of B. D. Greene on American Exchange Nat. Bank, N. Y. dated March 30, 1896, and credited by the Southern Bank State of Georgia, Savannah, March 28, 1896, to the account of E. H. Gaynor ... Exhibits 210-242 Vol 31 ... 6,000.00

$18,175.31
Allowance trip Carter to New York ... 75.00

Amount for Division ... $ 18,100.31
One-third of which is ... 6,033.44

P. 782. Note

*Carter testified before the Court Martial that he was not in New York as he remembered it, when Westcott returned from Europe, May 12, 1896. (Vol. 8, p. 4113.)

He now produces a diary entry under date May 11, 1896, as follows:

"Met R. F. W. and family who arrived from Europe, accounted to W. for acts as attorney during absence. He gave me money &c." (Vol. 19, p. 9150.)

Contemporaneous Checks.

Checks drawn on American Exchange National Bank:

Check B. D. Greene, cashed May 12, 1896, Exhibit 242. Vol. 31 ..... $2,000.00

Check B. D. Greene, cashed May 12, 1896, Exhibit 242. Vol. 31 ..... 6,000.00

Check B. D. Greene, dated May 8, 1896, favor John F. Gaynor, cashed May 26, 1896. Exh. 242 Vol. 31 ..... 8,000.00

Contemporaneous Deposits of Currency.

1896.

May 11, Deposit in account of O. M. Carter with Union Trust Co., Exhibit 251, bills. Vol. 31 ..... $ 400.00

May 13, Deposit in account of O. M. Carter with Union Trust Co., Exhibit 251, bills. Vol. 31 ..... 2,900.00

Nov. 24, Deposit in account of R. F. Westcott, with Union Trust Co., Exhibit 256, bills. Vol. 31 ..... 5,000.00

The above $5,000 was used Nov. 27, 1896, as part payment to B. D. Greene during the work on Oct. 8, 1896 contracts. See (F) Division 32 Vol 30

INVESTMENTS.

Colleton—Hunting Island or Port Savannah Co.

1896.

July 8, Bought through W. W. Mackall, Treas., 7th assessment on Hunting Island Land Co. Exhibit 537. Vol. 29 ..... $150.00

Paid for by:

1896

July 8, O. M. Carter's check on Merchants National Bank, Savannah, Ga., Exhibits 57 & 539.. 150.00

For previous payments on Hunting Island investment see *ante*, pp. 647 and 655-661. Vol 31 and Vol 29

P. 783. Note

**Statement of Trust Fund in Mer. Nat. Bank Savannah.*

June 30, 1896. Carter deposited in Mer. Nat. Bk. interest from the John Lyons note bought (*ante*, p. 748 and Dft. Exh. 96F, Vol. 20, p. 9584) $450.00

Collection of Dividends.

There were no dividends paid to any one on the Hunting Island investment.

Disposition.

Proceeds tied up in hands of Receiver in suit *vs.* O. M. Carter, *et al.*, at Savannah. Vol 1 p 3.8

Life Insurance Policy.

Payments on Policy No. ~~74,354~~ 743543 of the Equitable Life Assurance Society on the life of Oberlin M. Carter:

1896
June 2, Second annual payment, Exhibit 294 Vol. 29.. $453.00
June 5, 1897, Third annual payment, Court Martial, Exhibit 379 Vol. 27..... 453.00

$906.00

Paid for by:

1896
June 2, O. M. Carter's check on Union Trust Co. Exhibit 294 Vol. 29.....$453.00
1897
June 5, O. M. Carter's check on Union Trust Co., Court Martial Exhibit 379.. 453.00 906.00
Vol. 27

P. 784. Note

Trust fund in Carter's account Union T. Co.:

On Mch. 3, 1896, Carter had a balance of the trust fund to his own credit in U. T. Co. (*ante*, p. 755) of	$ 528.34
Mch. 6, 1896. Deposit coupons (Exh. 320, Vol. 29)	200.00
Mch. 16, 1896. Deposit dividend D. & H. stock (Exh. 320, Vol. 29)	350.00
Apl. 1, 1896. Deposit coupons (Exh. 320, Vol. 29)	1,500.00
Apl. 24, 1896. Deposit dividend L. & W. stock (Exh. 320, Vol. 29)	350.00
May 13, 1896. Deposit Coupons (Exh. 320, Vol. 29)	1,687.50
	$4,615.84
There was, therefore more than sufficient of the trust fund in Carter's account in Union T. Co. to pay the check for $453 drawn, June 2, 1896	$453.00
	$4,162.84

There was more than a sufficient amount of the trust fund in Carter's account in the Union Trust Co., even after the Gordon loan to pay the check of Jun 5, 1897, for the above insurance premium. (See *post*, p. 784.)

Reinvestment (K) See Division 22. Vol 30

Bierne Gordon Note.

1896
Nov. 5, O. M. Carter negotiated loan to Bierne Gordon secured by deed to real estate in Savannah, Ga., $10,000.00.

Paid for, viz.:

O. M. Carter sent his personal check on Union Trust Co., to R. F. Westcott, New York, which was deposited by Westcott his own credit in Union Trust Co, Oct. 26, 1896, Exhibits 282, 255, 256. Vol 31. $10,000.00

On the same day, Oct. 26, 1896, in reimbursement of the above, R. F. Westcott sent O. M. Carter a check drawn by R. F. Westcott, dated Oct. 26, 1896, on Union Trust Co., favor O. M. Carter, Exhibits 281, 255, 252. Vol 31. $10,000.00

The latter check for $10,000 was indorsed by O. M. Carter to Bierne Gordon.

See Carter's claim as to this and reply thereto (*ante*, p. 728).

P. 785. Note

Trust fund in Carter's account in Union Trust Co.:

On Aug. 20, 1896, Carter withdrew by check from the R. F. Westcott account in U. T. Co., as the evidence shows to repay himself the $10,000 loan from the trust fund he had made to Westcott in Jany., 1895 (*ante*, p. 727) $10,000.

This check was deposited in Carter's individual account in U. T. Co. (*Ante*, p. 727, and Exh. 231, Vol. 31.)

Between June 15 and Oct. 21, 1896, Carter deposited in that account coupons, dividends and interest from trust fund, per Exh. 320, Vol. 29, 9,530.

He already had in that account May 13, 1896 (*ante*, p. 784) 4,162.84

$23,692.84

There was, therefore ample of the trust fund in that account to meet the check of Oct. 26, 1896, which went to make the Gordon loan. Carter testified that the Exchange of checks was made so that the check delivered to Gordon might bear Westcott's signature.

Reinvestment (G) See Division 20. Vol 30

Baltimore & Ohio Receiver's Certificates.

Purchased through Reed & Flagg in the account of R. F. Westcott, Exhibit 239: Vol 31

1896

Dec. 17, 10 M—Receiver's Certificates B. & O. 6 per cent	$10,162.50
Dec. 22, 10 M—U. S. Coupon 1904 5 per cent. bonds	11,400.00
	$21,562.50

Paid for by:

1896

Dec. 17, R. F. Westcott's check on Union Trust Co., Exhibits 239, 255 Vol 31	$10,058.16	
Dec. 17, R. F. Westcott's check on Union Trust Co., Exhibits 239 & 255. Vol 31	130.64	
Dec. 22, R. F. Westcott's check on Union Trust Co., Exhibits 239, 255 Vol 31	11,400.00	
	$21,588.80	
Less interest charged	26.30	21,562.50

INVESTMENTS.

Orange, New Jersey.

Purchased by O. M. Carter from R. F. Westcott a half interest in Westcott's Orange, N. J., property (see Deed dated January 25, 1897, Exhibit 427, Parsons). Vol 32 p 2284

The terms of the purchase as recited in contract of October 29, 1897, Exhibit 283 (stating what had been done) were: Vol 32 p 2411 Vol 34

R. F. Westcott put in the land at a valuation of	$61,000.00
Estimated cost of improvements	65,040.70
	$126,040.70
Carter's one-half	$63,020.35

(The contract of Oct. 29, 1897, Exhibit 283, recited that Carter had paid his half.) Vol 2 v 01291

How paid for:

Re-investment (C) Vol 30

Sales of Carter's securities through Reed & Flagg by Westcott and proceeds applied to payment of himself and to Carter's half of improvement as above.

1897	
April 19, 5 M—St. L. & I. Mt. 5's, bought Divisions 14 and 16, Exhibits 239 and 256 Vol 31	$5,050.28
April 21, 3 M—U. S. 1904 5's, bought Division 20, Exhibit 239 vol 31	3,423.75
April 24, 1 M—U. S. 1904, 5's, bought Division 19, Exhibit 239 vol 31	1,141.25
May 11, Check O. M. Carter on Union Trust Co., New York, deposited in account of R. F. Westcott with Union Trust Co., New York, Exhibits 255, 256 vol 31	5,000.00
May 19, 10 M—Wabash 1st 5's, bought Division 2 and 16, Exhibits 239 & 256 vol 31	10,187.50
June 25, 5 M—Chicago & E. I. 5's, bought Division 3, Exhibit 239, 256 vol 31	4,993.75
July 6, 400 shares ($20,000) stock Delaware, Lackawanna & Western; bought Divisions 28, 29, 30, Exhibits 239, 256 vol 31	31,525.00
	$61,321.53
Less checks from Westcott to B. D. Greene Apr. 19 to Aug. 10, 1897. See F, Div. 32. vol 30	20,000.00
	$41,321.53
Add check from B. D. Greene to R. F. Westcott, Aug. 10, 1897, see "F", Division 32 vol 30	21,000.00
Investment accounted for herein	$62,321.53

For complete adjustment between R. F. Westcott and Car-

COLLECTION OF INTEREST NOTES.

The semi-annual interest note on the Bierne Gordon loan of $10,000 was collected by Carter July 1, 1897, and deposited in his account with Union Trust Co. Exhibit 251, and 320.

Carter personally deposited on December 23, 1896, Exhibit 515, one of the interest notes in the Union Trust Co. for credit of R. F. Westcott and same was credited to Westcott December 30, 1896, $93.70. Exhibits 444 and 320.

COUPON COLLECTIONS.

Baltimore & Ohio Receiver's Certificates.

The Coupons on the 10 B. & O. Receiver's certificates were collected by O. M. Carter June 2, 1897. Exhibit 251.

United States 1904 5 *Per Cent. Bonds.*

May, 1897, 1 coupon collected by R. F. Westcott.
August, 1897, 1 coupon collected by O. M. Carter.
Exhibits 320

FINAL DISPOSITION.

Bierne Gordon Note.

The Bierne Gordon note for $10,000 was included in final receipt of October 29, 1897, and the proceeds of same were collected by the Receivers in New York and Savannah in suit *U. S.* v. *Carter, et al.*

Carter's one-half $63,020.35

Baltimore & Ohio Receiver's Certificates.

The 10 M—Baltimore & Ohio Receiver's certificates are included in final receipt of October 29, 1897, and were subsequently sold by L. Laflin Kellogg of the firm of Kellogg & Rose, Attorneys, for O. M. Carter, on April 27, 1898, through A. W. Kilbourne & Co., Brokers, New York, for $9,943.33. Exhibit 417 (Parsons). Vol. 28

U. S. Coupon 1904 5 *Per Cent. Bonds.*

9 of the 10 U. S. Coupon 1904 5 per cent bonds were sold February 10, 1897, by R. F. Westcott throught Union Trust Co., New York and proceeds reinvested in cash payments to Greene during execution of work on October 8, 1896, contracts. See (F) Division 32. Vol. 30

The remaining 1 bond is included in final receipt of October 11, 1897, and was subsequently sold in a lot of 12 by L. Laflin Kellogg, of the firm of Kellogg & Rose, Attorneys, for O. M. Carter on October 12, 1897, through A. W. Kilbourne & Co. brokers, New York. Proceeds $14,990.62. Exhibit 417 (Parsons). Vol. 28

ADJUSTMENT BETWEEN WESTCOTT AND CARTER, MAY 12 TO NOV. 15, 1896.

1896.			
May 29.	Interest collected by R. F. Westcott on Zippel and Adams mortgage notes (which had been transferred by Westcott to Carter Jan., 1895, and which were not reassigned until Aug. 20, 1896) Exhibit 563 and Vol. 1, p. 40	$ 175.00	
May 29.	R. F. Westcott's check favor O. M. Carter, May 29, 1896 (Exhibits 563, 255, 441) Vol. 3; Vol. 28		$ 175.00
		$ 175.00	$ 175.00
June 30.	R. F. Westcott's check favor of Geo. H. Smith & Hicks, insurance, $122.79, of which $40.79 a/c of Carter's 8th Ave. property (Exhibit 563)	$ 40.79	
July 20.	O. M. Carter's check No. 79, dated July 20, 1896, favor R. F. Westcott (Exhibits 441, 538) Vol. 28; Vol. [illegible]		$ 40.79
		$ 40.79	$ 40.79
Aug. 20.	Matured loan O. M. Carter to R. F. Westcott, secured by assignment of mortgages, January, 1895 (Ante, page [illegible])	$10,000.00	
Aug. 20.	R. F. Westcott, O. M. Carter, attorney, check, dated Aug. 20, 1896, drawn on Union Trust Co., after the bank account had been re-transferred to Westcott, May 12, 1896 (Ante, page 725)		$10,000.00
		$10,000.00	$10,000.00
Oct. 1.	R. F. Westcott's check No. 164, dated Sept. 29, 1896, taxes on Carter's 8th Avenue property (Exhibits 564, 255, 441). Vol. 3; Vol. 28	$ 314.30	
	Difference claimed by Carter to have been deducted in settlement between him and Westcott (Defendant's Exhibit 96F, page 37) Vol. 20, Pg. [illegible]	5.10	$ 309.20
Oct. 10.	O. M. Carter's check No. 111, favor of R. F. Westcott, deposited to R. F. Westcott's credit in Union Trust Co. (Exhibit 538) Vol. [illegible]	$ 309.20	
		$ 309.20	$ 309.20
Oct. 26.	Deposit in Union Trust Co. credit of R. F. Westcott, check of O. M. Carter, dated Oct. 22, 1896, drawn on Carter's individual account in Union Trust Co. (Exhibits 256, 252, 282) Vol. 3	$10,000.00	
Oct. 26.	R. F. Westcott's check, dated Oct. 26, 1896, drawn on Union Trust Co. in favor of O. M. Carter, endorsed by Carter favor of Bierne Gordon for Bierne Gordon loan (See ante, p. 728 and 762)		$10,000.00
		$10,000.00	$10,000.00
Nov. 24.	R. F. Westcott check No. 241, dated Nov. 23, 1896, drawn on Union Trust Co., taxes on 8th Ave.. property (Exhibits 564, 441) Vol. 28.		$ 9.60
	No corresponding check from Carter to Westcott. Probably settlement by cash payment from Carter to Westcott	$ 9.60	

R. F. Westcott collected no coupons in 1896 up to November 15th.

ADJUSTMENT BETWEEN WESTCOTT AND CARTER NOV. 16, 1896, OCTOBER 29, 1897.

Receipts and Disbursements, R. F. Westcott.

1896		Receipts.	Disbursements.
Nov. 16,	Ex. 239, Proceeds sale 10 U. S. 5% 1904 bonds Vol. 31.....	$11,218.75	
	23, Ex. 252-256, Deposit a/c R. F. W., U. T. Co. Ck. O. M. Carter . Vol. 31.....	3,781.25	
	24, Ex. 256, Q. 4, Deposit a/c R. F. W.—U. T. Co. Bills (Division 31) . Vol. 31.....	5,000.00	
Nov. 27,	Ex. 255, 250-C, 241-441 Ck. R. F. W. favor B. D. Greene Vol 31 Vol 28		$19,000.00
Dec. 1,	Ex. 239-256, Proceeds sale 10 U. S. 5% 1904 bonds (20 sold Dec. 1, and 10 rebought Dec. Dec. 22, 1896) Vol. 31.....	11,331.25	
Dec. 17,	Ex. 239, Bought 10 B. & O. certificates Vol. 31.....		10,188.80
Dec. 22,	Ex. 255-251, Ck. R. F. W. deposit a/c O. M. C., U. T. Co. Vol 31		2,142.45
Dec. 23,	Ex. 515, 516, 517, 518, 441, 444 —Deposited by O. M. C. in U. T. Co. credit a/c R. F. W. Interest Notes Vol. 11 P. 278-282 Vol.	818.70	
Dec. 23,	Ex. 444, 441, 320, 514, Deposits by O. M. C. in U. T. Co. for credit a/c R. F. W., Jan. 1897 coupons Vol. 28 Vol. 29 Vol. 11. P. 279	2,142.50	
	Footing forward.....	$34,292.45	$31,331.25

*1. T. M. Cunningham Interest Note.....$275
John Lyons " " 450
Bierne Gordon " " 93.70

$818.70

*2.

5	Wabash, Detroit & Chi. Ex.	5%	$125
10	Chi., Milwaukee & St. P.	7%	350
30	N. Y., Lack & Western	6%	900
15	N. Y. Central	7%	525
3	Morris & Essex	4½%	67.50
5	Joliet & North Ind.	7%	175

$2142.50

		Receipts.	Disbursements.
	Footing forward	$34,292.45	$31,331.25
1897			
Jan. 22,	Ex. 251, 255, Deposit a/c O. M. C. in U. T. Co. ck. R. F. W., O. M. C., Atty., U. T. Co. Vol 31		1,961.20
	Ex. 320, Feby. 1897 Coupons 30 U. S. 5's. Vol 29	375.00	
Feb. 10,	Ex. 256, Proceeds sale U. T. Co. a/c R. F. W., 9 U. S. 5% Coupon Bonds Vol 31	10,192.50	
Feb. 10,	Ex. 255-250, D. 241 Ck. R. F. Westcott favor B. D. Greene Vol 31		10,000.00
Mch. 5,	Ex. 255—Ck. R. F. W., favor O. M. C. Vol 31		367.50
Apr. 19,	Ex. 239, Proceeds sale Reed & Flagg, 5 St. Louis & Iron Mt. bonds . Vol 31	5,050.28	
Apr. 21,	Ex. 239, Proceeds sale Reed & Flagg, 3 U. S. Coupon 5% bonds . Vol 31	3,423.75	
Apr. 24,	Ex. 239, Proceeds sale, Reed & Flagg, 1 U. S. Coupon 5% bond . Vol 31	1,141.25	
	Ex. 255-250, E. 241 Ck. R. F. Westcott favor B. D. Greene Vol 31		10,000.00
	Ex. 320, Df. 96-F, May 1897 Coupons . Vol 31 Vol no P. 40.	587.50	
	Ex. 252-256, Deposit a/c R. F. W., U. T. Co., O. M. C. Ck. on U. T. Co. Vol 31	5,000.00	
May 12,	Ex. 236 M-255, 236, 236-F, Ck. R. F. W. favor B. D. Greene Vol 31		5,000.00
May 19,	Ex. 239, 239 K-K, Proceeds sale Reed & Flagg, 10 Wabash 5% . Vol 31	10,187.50	
June 10,	Ex. 236, 255, Ck., R. F. W., dated June 7, '97, favor B. D. Greene . Vol 31		5,000.00
	Footing	$70,250.23	$63,659.95

* 10 Wabash 1st 5% $250

	Receipts.	Disbursements.
Footing forward	$70,250.23	$63,659.95
June 25, Ex. 239, Proceeds sale Reed & Flagg, a/c R. F. W., 5 Chi. & E. I. 5% bonds Vol. 31	4,993.75	
July 6, Ex. 239, Proceeds sale Reed & Flagg, a/c R. F. W., 400 shares Del. Lack. & W. stock Vol 31	31,525.00	
Aug. 10, Ex. 413, 414, 415, 416, 256, 235, Deposit a/c R. F. W., U. T. Co., Ck. of B. D. Greene Vol 28 Vol. 31	21,000.00	
Sept. 17, Ex. 441, Ck. R. F. W., favor O. M. Carter .. Vol. 28		500.00
Sept. 29, Ex. 441, Ck. R. F. W. favor O. M. Carter ..... Vol. 28		500.00
	$127,768.98	$64,659.95
Dec. 30, 1896, Ex. 564, Ck. No. 285, R. F. W., C. Muller & Son, repairs on 8th Ave		106.50
	$64,766.45	$64,766.45
Excess R. F. W. Receipts over disbursements	$63,002.53	
Ex. 283 Contract settlement Oct. 29, 1897, recites "Of this sum ($126,040.70) O. M. Carter has duly paid to R. F. W. his entire share" one-half Vol. 24 P 1291	$63,020.35	
Difference	$17.82	

Ex. 618 and Df. Ex. 96-F. Rental safety deposit Box No. 258 standing, up to July 6, 1897, in joint names of R. F. Westcott & O. M. Carter paid Oct. 14, 1896, by check O. M. Carter $35,00 for annual rent Oct. 14, 96, to Oct. 14, 1897. On Nov. 17, 96, rental from Oct. 14, 97, to Jany., 1898, paid by check O. M. Carter, Ex. 618 and testimony Carter, p. 310 Vol. 14 P 6203-4 Vol. 20 P 95-86 Vol. 14 P 6203-4 Vol. 1 P 56-6

Ex. 618 R. F. Westcott was given the exclusive use of box 258 July 6, 1897, and box changed to Westcott's name, and new box rented in Carter's name, Westcott had use of box 6 months which Carter paid for at rate of $35 per annum... 17.50

CARTER'S MISSTATEMENT (DEFTS. EXHIBIT 96D) OF THE ORANGE, N. J. TRANSACTION.

Carter had to admit the fact of the Orange, N. J., deal between himself and Mr. Westcott; he could not get around the contract, Exhibit 283 of October 29, 1897. In order, however, to explain away the transaction, in his account, Exhibit 96-F, which he prepared and offered before the Examiner in January, 1905, he gives a list of the securities which he claims he turned over to R. F. Westcott May 10, 1897. They are not the securities which, as we have shown, were sold by Mr. Westcott and applied to the Orange, N. J., investment, but are the securities which he claims as his "wife's estate" (*ante*, p. 787).

The securities which he claims he sold May 10, 1897, to Westcott are stated, 96-F, p. 41, as follows:

5 M—Ches. & Ohio	par	$ 5,000
5 M—Wabash	"	5,000
10 M—Chi. St. P. M. & O.	"	10,000
10 M—Morris & Essex	"	10,000
5 M—Wabash D. & Chi.	"	5,000
5 M—Chi. & E. Ill.	"	5,000
150 shares Towboat stock	"	15,000
30 shares Brewing stock	"	3,000
Check on U. T. Co.	"	5,000
		$63,000

There is not a scrap of documentary evidence in the record to show that any such transaction in reference to the above securities took place, not even in Carter's Diaries.

Of the above, the only bonds actually included in the Orange, New Jersey, deal, as shown by the exhibits, see adjustment, *ante*, pp. 791 to 794 (and they were received by Westcott at the prices for which they were sold and not at par value), were the following:

May 19, 1897, 5 M—Wabash 1st 5% bonds (part of a lot of 10 M— sold by Westcott for $10,187.50)	$5,093.75
June 25, 1897, 5 M—Chi. & E. Ill. 5%.....	4,993.75

Carter's reason for substituting in his prepared statement (Exhibit 96-F) the above $63,000 par value of securities for the securities which the bankers and brokers accounts show were the securities he actually turned over to Westcott for the half interest in the Orange, New Jersey, property, is apparent:—

(1) He had to meet the recital in the settlement contract of October 29, 1897, Exhibit 283, signed by himself showing he had paid Westcott $63,020.35 (*ante*, p. 763).

(2) He had to avoid the conclusion that the other securities were Carter's, which he actually did turn over to Westcott, and which Westcott actually did sell and apply to the Orange transaction, because he had time and again, denied their ownership by him.

(3) He had to meet the fact that these bonds (constituting a part of the $40,000 of bonds of his wife's alleged estate on hand May 2, 1893 (*ante*, p. 628), and which he has treated as his own up to May 10, 1897), and which he now claims he turned over to R. F. Westcott on May 10, 1897, were included in the receipt of October 29, 1897, the alleged "gift" receipt from Westcott to him.

He therefore meets the situation by a fictitious transaction supported by his own statement, with no documentary evidence, not even a diary entry, to support it, of a sale by him, May 10, 1897, of these wife's alleged estate bonds to

Westcott, together with Towboat stock, and 30 shares of Brewing Company stock.

By this means he gets the wife's estate bonds, back into Westcott's hands, on May 10, 1897, so as to make it consistent with Westcott's making him a present of the same bonds in the receipt of October 29, 1897.

Under Cross-Examination.

Under cross-examination Carter had to admit that he never had 30 shares of Brewing Company stock, but only 25 shares. He then said he had made up the above statement from memory, and that it was 25 shares of Brewing Company stock and 5 shares of Cotton Mill stock (Wyman Vol. 3), p. 1314-1316.

Another Fictitious Transaction.

Having now gotten rid of his wife's estate securities he has Mr. Westcott make him a present of them again October 29, 1897,, at the time of the receipt of October 29, 1897.

But the towboat stock and Brewing Company stock is not in that receipt. And to get them back in his possession again he claims he found them in R. E. Westcott's possession in the summer of 1898, among the other papers which are included in that receipt and concludes that Mr. R. F. Westcott must have intended to make him a present of them (Wyman Vol. 3), pp. 1302-5.

Still Another Anomaly.

Eighth Avenue Property.

The Government got hold of and introduced in the Greene & Gaynor hearing in 1900 Westcott's deed of the Eighth avenue property, dated January 17, 1895, to Carter.

Carter testified (Wyman Vol. 2), p. 325-327, that he sold the 8th avenue property back to Westcott on October 11, 1897, as

Westcott demanded it as a part of the alleged ~~trade of~~ half interest in the Orange, N. J., property.

At that time the deed to Carter of January 17, 1895, had been recorded as shown by the deed in evidence. *

Carter had, therefore, in the present case to get rid of the 8th avenue property prior to October 29, 1897, and get it back again afterwards to account for his possession of the deed of January 17, 1895, and justify his present claim of title under it.

On cross-examination he testified that the transfers of bonds and deed were made to Mr. Westcott in the law office of Mr. Thatcher of Reed, Thatcher and Barnum in New York and under his supervision, and yet that the transfer of the 8th avenue property was done only by handing back to R. F. Westcott the deed of January 17, 1895, which Westcott had made to Carter. (Wyman Vol. 3) p. 1525-1527.

Is it possible that Mr. Thatcher, a sensible lawyer, would have supervised such a manner of conveyance of real estate?

There is no evidence that the bonds delivered by Westcott October 11, 1897, included in receipt of October 11, 1897, were delivered in Thatcher's law office, except Carter's own statement. ‡

He testifies that a few days later Westcott got furious with him when he found out the deed had been recorded, and so he made Carter a present of it on October 29, 1897. (Wyman Vol. 3), p. 1527. ‡

But he testified he never saw Westcott again after October 29, 1897, and that he did not know that Westcott had made him a present of it until the summer of 1899, when he found it in the R. E. Westcott papers (Wyman Vol. 3), p. 1306, and (Wyman Vol. 2), p. 357.

P. 797

*Carter's previous testimony had, therefore made this 8th avenue property equitably Westcott's at the time of the Court Martial trial in 1898. (*Ante*, p. 794.)

‡Before the Court Martial Carter testified that Westcott may have had the 8th avenue deed recorded. (Vol. 8, p. 4090.)

Collection of Eighth Avenue Rents by Carter After October 11, 1897.

Vol. 2 and Exhibit 4 (Booth) Vol. 10 Page 8
(Exhibit 421 and original checks in evidence.)

DESCRIPTION OF CHECK.

Date.	No.	By Whom Drawn and on What Bank.	In Whose Favor Drawn.	Amount.	1st Indorsement After That of O. M. Carter.
1897. Oct. 20	9264	Jas. F. Bragg on N. Y. Co. Nat'l Bank	O. M. Carter	$ 20.56	H. J. Ennis, Cashier University Club, N. Y.
Nov. 9	9292	" "	" "	200.00	Union Trust Co., N. Y.
Dec. 9	9375	" "	" "	200.00	Union Trust Co., N. Y.
1898. Jany. 7	9432	" "	" "	200.00	Watson & Powers, Savannah, Ga.
Jany. 31	9482	" "	" "	13.27	Watson & Powers, Savannah, Ga.
Feby. 9	9496	" "	" "	200.00	Watson & Powers, Savannah, Ga.
Mch. 9	9582	" "	" "	200.00	Union Trust Co., N. Y.
April 7	9632	" "	" "	200.00	Watson & Powers.
April 26	9659	" "	" "	125.01	Union Trust Co.
May 9	9704	" "	" "	100.00	I. S. Carter
June 9	9743	" "	" "	300.00	Union Trust Co.
July 9	9828	" "	" "	200.00	Lucinda M. Carter
July 29	9864	" "	" "	124.96	Hoffman House, N. Y.
				$2,083.80	

It is thus seen that during the period Oct. 11, 1897, to summer of 1898, when Carter claims he did not know the 8th Ave. property was his, he was collecting and appropriating the rent on it right straight along.

Carter Claims to Have Sold His Orange, N. J., Interest to R. F. Westcott October 11, 1897—Another Fictitious Transaction.

In order to get the ownership of the securities which are included in the receipt of October 11, 1897, signed by Carter to Westcott, Exhibit 269, Carter invents a sale of his Orange, N. J. interest to Westcott for the following securities, see Vol. 20 p. 9290 96-F, p. 42.

20 M—M. L. S. & M. S.	$20,000
15 M—N. Y. Central	15,000
12 M—United New Jerseys	12,000
1 M—United States 5s	1,000
5 M—Joliet & No. Ind.	5,000
10 Mil. & St. P.	10,000
	$63,000

Cross-Examination.

On cross-examination his attention was called to the fact, that the 12 M—United New Jerseys were not in the receipt of October 11, 1897, he then claimed that that, too, was a clerical error. Vol. 13 p. 2066

But there is absolutely no documentary evidence in the case, not even a diary entry to sustain that alleged transaction, and, therefore, it was a misstatement and not a clerical error.

Having now sold, as he claims, the Orange, N. J., real estate to Westcott for the $63,000 bonds, on October 11, 1897, without any conveyance, only by simply giving back to Westcott the deed which Westcott had made to him, then he has Westcott hand the deed to the Orange, N. J., property back to him on October 29, 1897, and thus make him a present of the property.

That he could expect that credence would be given to such an account in a court, is beyond comprehension.

ADVANCEMENTS MADE BY THE STOCKHOLDERS OF THE ATLANTIC CONTRACTING CO. FOR CARRYING ON WORK UNDER CONTRACTS, OCT. 8, 1896.

(Deposits in local banks, etc.)
Indicated Contributions through the Gaynors.

Nov. 10, 1896.	Check.	W. T. Gaynor on Commercial Bank, Syracuse, N. Y., Exh. 208	Vol 31		$ 2,500.00
Jan. 14, 1897.	"	" " " " " " " " " "	201, 202		10,000.00
" 20 "	"	" " " " " " " " " "	201, 202		11,000.00
Mch. 3 "	"	" " " " " " " " " "	201, 202		10,000.00
Apl. 3 "	"	" " " " " " " " " "	206		5,000.00
May 10 "	"	" " " " " " " " " "	201, 202		5,000.00
					$43,500.00

INDICATED CONTRIBUTIONS THROUGH B. D. GREENE.

Oct. 22, 1896.	Check.	B. D. Greene on Am. Ex. Natl. Bk., N. Y., Exh. 242, 208	Vol 31		$ 2,000.00
Nov. 25	"	" " " " " " " " " "	242, 206		5,000.00
Dec. 12	"	" " " " " " " " " "	242, 206		13,800.00
Feb. 8, 1897.	"	" " " " " " " " " "	242, 206		9,800.00
Mch. 13 "	"	" " " " " " " " " "	242, 206		2,500.00
" " "	"	" " " " " " " " " "	242, 206		2,500.00
Apl. 22 "	"	" " " " " " " " " "	242, 206		5,000.00
May 7 "	"	" " " " " " " " " "	242, 206		2,500.00
" " "	"	" " " " " " " " " "	242, 206		2,500.00
June 9 "	"	" " " Knickerbocker Trust Co., N. Y., Exh.	206, 235		5,000.00
" 23 "	"	" " " " " " " " "	206, 235		5,000.00
Nov. 24, 1896.	"	" " " Am. Ex. Natl. Bk., N. Y., Exh.	242, 201, 202		9,750.00
Mch. 15, 1897.	"	" " " " " " " " "	242, 201		2,500.00
			242, 202		2,500.00
Apl. 30 "	"	" " " " " " " " " "	242, 201, 202		2,500.00
" " "	"	" " " " " " " " " "	242, 201, 202		2,500.00
" " "	"	" " " " " " " " " "	242, 201, 202		4,000.00
May 25 "	"	" " " Knickerbocker Trust Co., N. Y., Exh.	201, 202, 235		10,000.00
" " "	"	" " " " " " " " "	201, 202, 235		5,000.00
June 28 "	"	" " " " " " " " "	201, 202, 235		5,000.00
					$99,350.00

Less amount received by B. D. Greene from Fernandina and deposited in Am. Ex. Natl. Bk., N. Y., Jany. 25, 1897, as per Exhibits 200 and 241 ... Vol 31 ... 10,000.00

$89,350.00

DIVISION 32, JULY 6, 1897, EXHIBIT 319. Vol 30

Carter was in New York August 6, 1897. Carter left for Europe August 10, 1897 (Wyman Vol. 3), 1511.

ADVANCEMENTS MADE BY THE STOCKHOLDERS OF THE ATLANTIC CONTRACTING CO. FOR CARRYING ON WORK UNDER CONTRACTS, OCT. 8, 1896.—(Continued.)

Advances by R. F. Westcott out of Carter's funds, and by Carter personally, by check, to B. D. Greene, pending the execution of the contracts of Oct. 8, 1896. (*See Ante, p.* 791-2.)

Nov. 27, 1896.	R. F. Westcott	Check, dated	Nov. 27/96,	favor	B. D. Greene,	Exh.	250C 255	....	$19,000.00—	Ex.	241.	Vol. 31
Dec. 12 "	O. M. Carter	" "	Dec. 9/96	"	do	"	252 250F	....	1,000.00—	"	"	"
Feb. 10, 1897.	R. F. Westcott	" "	Feb. 9/97	"	do	"	255 250D	....	10,000.00—	"	"	"
Apl. 19 "	"	" "	Apl. 19/97	"	do	"	250E 255	....	10,000.00—	"	"	"
May 17 "	"	" "	May 12/97	"	do	"	236M 255	....	5,000.00—	"	236.	"
June 10 "	"	" "	June 8/97	"	do	"	236L 255	....	5,000.00—	"	"	"
												$50,000.00

Net amt advanced by Greene $39,350.00

*Total Advancements.....$132,850.00

The bank accounts show deposits of the following additional amounts, which may have been contributed by some one or other of the parties, or by the company itself, but data is not sufficient to determine which, viz.: Oct. 17/96, $1,000. Nov. 19/96, $1,245. Dec. 21/96, $1.50. Feb. 3/97, $100. Mch. 27/97, $100. Apl. 30/97, $15. May 8/97, $902.75. June 28/97, $460.87 and $4.25. Total, $3,829.37. (Exhibits 201, 206.) Vol 3

Deposit of Carter's Disbursing Checks.

1897					
July	6	Ex. 255	Carter's Disbursing checks, dated July 6, 1897, to Atlantic Contracting Co. deposited to credit of B. D. Greene in Knickerbocker Trust Co., N. Y., Ex. 236 Vol 31		$575,749.90
July	6	Ex. 235	Checks B. D. Greene favor of W. T. Gaynor Vol 31	30,000.00	39,749.90
		235D	Vol 31	749.90	
		235C	Vol 31		
					$545,000.00
			Less amounts transferred and deposited in Local Banks at Savannah & Fernandina, from which disbursements for continuation of work were being made:		
July	9	Ex. 212	Check Wm. L. Gaynor on Com. Bank of Syracuse credited in % E. H. Gaynor, Treasurer, So. Bank St. Ga., Savh. Vol 31	12,000.00	
July	28	Ex. 201	Check J. F. Gaynor, Jr., on 1st Nat.		
		202	Bank, Syracuse, credited to % W. T. Gaynor in 1st Nat. Bank Fernandina, Fla. Vol 31	17,500.00	
July	24	Ex. 201	Check W. T. Gaynor on Trust Deposit		
		202	Co., Syracuse, credited in % W. T. Gaynor, 1st Nat. Bank, Fernandina Vol 31	2,500.00	32,000.00
					$513,000.00
			Arbitrary allowance Carter in N. Y.		75.00
			Less advances for carrying on work,		132,850.00
			Amount for division		$380,075.00
			One-third		$126,691.67

J. F. Gaynor's Proportion.

	Advances through Gaynors	43,500.00
	One-third of division	126,691.67
	J. F. Gaynor's Share	$170,191.67
	Reserved for July, 1897, work as above.	32,000.00
	Amount for Payment to J. F. Gaynor	$202,191.67
July 6 Ex. 235	Checks B. D. Greene favor J. F. Gaynor. Vol. 31	
	Paid July 13, 1897	2,408.39
	Paid July 13, 1897	100,000.00
	Paid July 13, 1897	100,000.00
	Amount Actually Paid J. F. Gaynor. .	$202,408.39

B. D. Greene's Proportion.

	Greene's advances from his own funds as above	39,350.00
	One-third of division	126,691.66
	Greene's share and return of personal advances	$166,041.66

O. M. Carter's Proportion.

	Advances by Westcott & Carter to Greene	50,000'00
	One-third of d vision	126,691.66
	Arbitrary allowance Carter lin N. Y.	75.00
	Amount of Carter's Interest	$176,766.66
	Greene's share and return advances as above	166,041.66
	Amount of Carter & Greene's interest .	$342,808.32

	Deposit July 6, '97 credit B. D. Greene in Knickerbocker T. Co. as above Ex. 236 Vol. 31		575,749.90
	Cks. to W. T. Gaynor as above	30,749.90	
	Cks. to J. F. Gaynor as above	202,408.39	233,158.29
July 6	Amount left in Greene's acconut		342,591.61

INVESTMENTS.

July 8 Ex. 235, 235-B, 237, July 8, '97, % B. D. Greene in Knickerbocker T. Co., 150 U. S. 5 % U. S. Coupon bonds, cost ... Vol 31 and Vol 25 p 12716 — $172,500.00

SALE.

Aug. 6 Ex. 236, 236-A, 236-B, sold % B. D. Greene, Knickerbocker T. Co., 20 U. S. Coupon 5 % bonds (part of above) proceeds ... Vol 31 ... — 22,700.00

PROCEEDS APPLIED.

Aug. 10 Ex. 256 D. f Ex. B.-5 & C-5—and Gov't Ex. 235, 414, 415, 416, 413, Deposit in % R. F. Wescott in U. T. Co., Ck. B. Greene on Knickerbocker Trust Co . — 21,000.00

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FINAL DISPOSITION.

The only part of the investments from the proceeds of this Division, which the Government has succeeded in tying up, is the $21,000 which went into the Orange, New Jersey, investment, See (*ante*, p. 787).

That the 130 U. S. Coupon bonds were delivered by Greene to Carter before Carter left for Europe and then by Carter to Greene and Gaynor when Carter came back from Europe, and when Carter became frightened at the Board investigation, along with the other securities of Carter's bought in previous Divisions, which Greene delivered to Westcott, according to the testimony of Dr. Solley and of Westcott there can be little doubt.

Whether Greene & Gaynor concluded to hold on to the 130 M—U. S. bonds, as he first threatened to do with all of them as Westcott testified (*ante*, p. 851) or whether they have been holding them since for Carter is immaterial.

It is a significant fact that the deposit ticket for deposit of the $31,159.50 Disbursing check on August 6, 1897, to the credit of B. D. Greene in the Knickerbocker Trust Co. is in Carter's handwriting. See Exhibit 236, and original deposit ticket in evidence. This was the day the 20 M—U. S. bonds were sold in Greene's account in the Knickerbocker Trust Company. This was also the day before which Carter sailed for Europe, *ante,* p. 48.

It is a significant fact too that of the $49,000 advanced through Westcott to Greene for carrying on the work only $21,000 was returned to Westcott, and that this $21,000 was just the exact amount which had to be paid by Carter to Westcott to settle with Westcott for the Orange, N. J., property according to the figures stated in the settlement contract of October 29, 1897. Exhibit 283. *Ante, p.* 93.

CURRENCY DEPOSITS.

Currency deposits in account of either O. M. Carter, or R. F. Westcott, or of R. F. Westcott by O. M. Carter, Attorney, from 1891 to 1897, the source of which is not shown by any banker's, broker's, or individual account in evidence, other then by the corresponding amounts cashed in the Greene & Gaynor accounts at contemporaneous period shown in the Divisions.

(See cross-examination of defendant's expert accountant, McPherson, Wyman Vol. 4, page 1181 to 1193.)

Date of Deposit.	No. of Exhibit Showing Deposit.	Exhibit No. 319, Division Number.	Description of Deposit.	Amount of Deposit.	Totals.
Ante Page 554 Dec. 18, 1891.	251 Vol 3	No. 1	Bills	$ 1,400.00	
June 8, 1892.	" "	"	"	2,500.00	
555 July 22 "	" "	"	"	8,001.00	
" " "	256 "	"	"	2,000.00	
" Nov. 7 "	61 "	"	*Check "M. W. C."	2,000.00	$ 16,000.00
561 Jan. 3, 1893.	251 "	No. 2	Bills	$ 3,550.00	
" " "	228 "	"	Currency	9,350.00	12,900.00
601 Feb. 10 "	251 "	No. 3	Bills	$ 5,850.00	
" " "	228 "	"	Currency	5,000.00	
" " 11 "	233 "	"	Cash	5,000.00	15,850.00
605 Mch. 14 "	251 "	No. 4	Bills	$ 7,000.00	7,000.00
611 Apl. 14 "	" "	No. 5	"	$ 400.00	
" " " "	256 "	"	"	14,500.00	
" " 15 "	251 "	"	"	3,000.00	17,900.00
639 May 13 "	256 "	No. 6	"	$ 500.00	
" " 15 "	232 "	"	Currency	3,000.00	
" " 23 "	256 "	"	Bills, $26,600.00	11,500.00	15,000.00
646 June 6 "	232 "	No. 7	Currency	$12,500.00	12,500.00
656 July 11 "	239 "	No. 8	"	$34,500.00	34,500.00
659 Aug. 9 "	" "	No. 9	"	$13,000.00	13,000.00
661 Sept. 6 "	" "	No. 10	"	$24,000.00	24,000.00
665 Oct. 10 "	" "	No. 11	"	$11,000.00	
" " 14 "	251 "	"	Bills	850.00	11,850.00
668 Nov. 8 "	232 "	No. 12	Currency	$ 6,000.00	6,000.00
673 Dec. 4 "	" "	No. 13	"	$16,000.00	
" " "	256 "	"	Bills	5,000.00	21,000.00
675 Jan. 8, 1894.	232 "	No. 14	Currency	$14,000.00	
" " "	256 "	"	Bills	2,500.00	16,500.00
688 Feb. 5 "	232 "	No. 15	Currency	$10,000.00	
" 6 "	256 "	"	Bills	8,000.00	18,000.00
693 Mch. 5 "	251 "	No. 16	"	$ 2,400.00	
" " "	256 "	"	"	5,000.00	7,400.00
707 Sept. 11 "	" "	No. 18	"	$50,000.00	
" " "	239 "	"	Currency & Specie	53,022.78	103,022.78
717 Oct. 24 "	256 "	No. 19	Bills	$ 4,000.00	4,000.00
718 Nov. 26 "	426 Vol 28	No. 20	Currency	$35,500.00	
" 27 "	" "	"	"	50.00	
" Dec. 4 "	239 Vol 3	"	"	53,000.00	88,550.00
723 " 31 "	256 "	No. 21	Bills	$ 1,200.00	
" Jan. 11, 1895.	" "	"	"	4,000.00	
" " "	" "	"	"	3,000.00	8,200.00
725 " 21 "	" "	No. 22	"	$ 3,000.00	3,000.00
736 Mch. 7 "	253, 67 "	No. 24	"	$20,000.00	20,000.00
740 Apl. 8 "	239 "	No. 25	Bills & Specie	$17,327.08	17,327.08
746 June 7 "	"	No. 27	Bills	$ 9,500.00	9,500.00
752 July 5 "	67, 253 "	Nos. 28, 29 & 30	"	$14,500.00	
754 Oct. 9 "	238 "	"	Currency	33,000.00	
" " 10 "	" "	"	"	16,000.00	
" Mch. 30, 1896.	251 "	"	Bills	3,500.00	67,000.00
783 May 11 "	" "	No. 31	"	$ 400.00	
" " 13 "	" "	"	"	2,900.00	
" Nov. 24 "	256 "	"	"	5,000.00	8,300.00
					$578,299.86

*The $2,000.00 "M. W. C." check, Nov. 7, '92, came from a deposit of $2,450.00 currency deposit made by O. M. Carter in the "M. W. C." account. (See ante, p. 555.)

We have heretofore refered to the account which Carter makes of an alleged gift to his wife, October 24, 1891, of $50,000 in currency, of which he claims Mr. Westcott turned over $5,000 to him at that time, and of which he claims $36,600 was found in the safety deposit box, in the name of O. M. Carter and M. W. Carter, his wife, in the Garfield Safe Deposit Company, on December 29, 1892, after Mrs. Carter's death, and which he claims Westcott took possession of, and doled out to him subsequently, in corresponding amounts and at the dates of the Greene & Gaynor Divisions. (*Ante*, pp. 559, 568 and 626-7.)

Mysterious Sources of Currency Supply.

The Grand Central Depot.

Captain Carter has atempted to account for the source of the mysterious curency supplies which went into his own or into R. F. Westcott's accounts, at contemporaneous periods to the Greene and Gaynor divisions, by six alleged visits of Mr. R. F. Westcott to the Grand Central Depot, New York, on which occasions Carter is made to accompany Westcott as a body guard.

The substance of Carter's testimony as to these visits is as follows:

He would accompany Mr. R. F. Westcott, at the latter's request, to act as a body guard, to the Grand Central Depot, New York; that when they got there, Carter would wait in the outside office of Mr. E. V. W. Rossiter, the private secretary of Mr. Vanderbilt. Mr. R. F. Westcott would go into the interior sanctum of Mr. Cornelius Vanderbilt. When Westcott came out, he and Carter would go down town to the Safe Deposit Company, and Westcott would pull out from his pocket a roll of money and say: "I got this from Mr. Vander-

bilt in private deals in subsidiary companies of the New York Central Railroad." Westcott would then put the money in the safety deposit box, to which Carter and he both had access.

On some of these visits, he substitutes Mr. C. C. Clark, another New York Central official, at the Grand Central Depot, in place of Mr. Cornelius Vanderbilt, in the account given.

The aggregate of the currency produced before Carter, from these visits, according to Carter, was $435,000.

Carter has nothing to back up his testimony on that subject, except the entries in his diaries, which he produced in evidence for the first time in January, 1905. He made no such claim before the Board or before the Court Martial.

The following is a list of the amounts of currency he claims were so produced by Westcott from the Grand Central Depot visits, with reference to the dates of his diary entries, and to the pages of the Wyman record in which he was cross-examined about them:

Westcott and Carter's Alleged Visits to Grand Central Depot, and Alleged Currency Received.

Date of Visit. Diary entry.	Currency received.	Carter's direct examination. Wyman Vol. 2. page.	Carter's cross-examination. Wyman Vol. 3. page.
March 14, 1893,	$7,500.	163	1063-4
April 14, 1893,	$15,000.	196	1077-8
June 6, 1893,	$12,500.		1086-7
July 11, 1893,	$50,000.		1117-8
Sept. 11, 1894,	$200,000.		1206
Jan. 2, 1895,	$150,000.	248	
	$435,000		

P. 808. Note.

*Before the Board Carter testified he did not know the source from which Westcott obtained the money which he had turned over to Carter since January, 1881, that Westcott had this money since Carter first knew him. (Vol. 18, p. 6455.)

Carter's Testimony as to the Grand Central Depot Visits.

Carter's testimony as to the $150,000 of currency which he claims Westcott got from the Grand Central Depot, January 2, 1895, and put in the joint box, so that Carter could bring out for investment during the period from January 29, 1895, to May 12, 1896, while Westcott was in Europe, will illustrate his explanation as to each of the above visits.

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Carter testified on the direct (Wyman Vol. 2), p. 249:

"Q. (By Mr. Stone.) State exactly what you did up there, and what he did as far as you know?

A. We passed through the vestibule into the office of Mr. Rossiter, who was Mr. Vanderbilt's private secretary, and who is now one of the vice presidents of the New York Central Railroad. I waited in that office while Mr. Westcott went into the inner office of Mr. Vanderbilt, and shortly after Mr. Westcott returned and I joined him and we went downstairs and walked across 42nd street to 6th avenue, and took the 6th avenue elevated road and then went down town to his safety deposit vault, when he took this money from his inside waistcoat pocket and placed it in that vault.

Q. When he took it out of his pocket, that was the first time you actually saw the money, was it?

A. Yes, sir.

Q. What reason did he give you for having you go up to these offices with him?

A. He said that a man's life would not be safe carrying money through the streets of New York alone if it was known that he had so much.

Q. Did he ask you to go along to protect him, or anything of that kind?

A. He did.

Q. Was that the sole reason that you went?

A. It was.

Q. Did you have any personal or pecuniary interest in any of that money?

A. None whatever.

Q. Have you any idea where it came from other than the circumstances you have described?

A. Well, there are other circumstances which he told me of.

Q. You may state what he told you about it, unless Mr. Erwin objects; I am perfectly willing you should state it, if Mr. Erwin desires it, but perhaps what he told you would not be competent.

A. I do not know of my own knowledge.

Q. I will ask you the question, what did he tell you as to where the money came from?

A. He told me that it came from Mr. Cornelius Vanderbilt.

Q. In connection with what?

A. In connection with some deals that he had, which I understood were in the nature of subsidiary transportation companies in connection with the Vanderbilt systems of railways.

Q. He then put that $150,000 in currency in his safety deposit vault?

A. He did.

Q. Was it all substantially there when he left for Europe?

A. Yes, sir.

Q. He left it in your charge?

A. He did.

Q. And $20,000 of this deposit of March 7, 1895, came from that currency, did it?

A. Yes, sir."

There was no testimony before the Board or before the Court Martial, as to any of these alleged currency deposits being received from the Grand Central Depot. Carter was questioned specifically by the Board about the deposit of March 14, 1893, and the record shows that he then, with his diary in his hand, stated that it did not show the source of the deposit, or even if the deposit was in currency, but his diary, entry March 14, 1893, now shows: Vol. 19 P. 9072

"W gave me 15 $500 bills: Gave one to Stanton and deposited balance. Got them G. C. D."

Vanderbilt Dead.

Carter produces these diary entries in evidence for the first time in January, 1905, when he admits the Cornelius Vanderbilt referred to is dead (Wyman Vol. 2), p. 248. Vol. 2 P. 1559

Clark's Mentality Gone.

On December 30, 1905, while certain rebuttal testimony was being taken by the Government before Examiner Wyman in New York, it apears from the record (Wyman Vol. 9), p. 4679, that the complainant's attorney undertook to look up Mr. C. C. Clark, the former official of the New York Central Railroad, to whom Carter had referred, and found that he was an old man over eighty years old, in feeble health, and with mind so feeble he had to be placed in the custody of attendants.

Mr. H. G. Stone then said (Wyman Vol. 9), p. 4680:

"Mr. Stone: I will say that I made similar inquiry in regard to Mr. Clark and obtained the same information that you did.

Mr. Erwin: I will ask, Mr. Stone, at what time you made your inquiries?

Mr. Stone: Oh, it must have been over a year ago. I came to the conclusion from my inquiries that he would not be of any value as a witness on the stand, on account of his age and the condition of his mind."

We see, therefore, that at the time, January, 1905, when Carter produced his diaries, with entries referring to "Mr. C. V." and "Mr. C.," and testified that they referred to Mr. Cornelius Vanderbilt and Mr. C. C. Clark, that he, Carter, knew that neither of them could contradict him.

Fortunately, the relationship then borne by Mr. E. V. W. Rossiter, now vice president of the New York Central Railroad Company, but then private secretary to Mr. Cornelius Vanderbilt, and his present relationship to the Vanderbilts, has enabled us to get from him testimony which shows that the whole story is a fabrication.

Rossiter's Deposition (Wyman Vol. 9), p. 4676. Vol 68 P 1925

"United States of America,
Southern District of New York,
State and County of New York. } ss.

Before the undersigned, personally comes Edward V. W. Rossiter of said State and County, who being duly sworn, in the equity cause of the *United States of America* v. *Oberlin M. Carter, et al.*, pending on bill in the Circuit Court of the United States of America for the Northern District of Illinois, and on auxiliary bills in other districts, deposes and says:

That for some years prior to March 14th, 1893, and thereafter continuously up to the death of Mr. Cornelius Vanderbilt on September 12th, 1899—the said Cornelius Vanderbilt being the son of William H. Vanderbilt, deceased, and Chairman of the Board of Directors of the New York Central and Hudson River Railroad Company—the deponent had confidential charge of the personal financial affairs of the said Cornelius Vanderbilt; that deponent kept in his personal possession and custody, the personal check books, bank books, cancelled checks, etc., etc., of the said Cornelius Vanderbilt, covering transactions of every kind relating to investments and disbursements during said period, and was conversant with all the personal business transactions of the said Cornelius Vanderbilt.

Deponent's attention has been called to what is stated to be the testimony of Oberlin M. Carter, in said cause to the general effect that said Oberlin M. Carter accompanied Robert F. Westcott to the financial offices of the New York Central and Hudson River Railroad Company, in the Grand Central Depot, New York City, on several different dates, and that after returning from said offices, Mr. Robert F. Westcott stated to Oberlin M. Carter that he had received from said financial offices, on said respective dates and visits, large sums of currency, which he had received from private deals with Mr. Cornelius Vanderbilt supposed to be in connection with subsidiary companies conected with the New York Central Railroad, the dates and amounts so stated by the said Oberlin M. Carter, as deponent understands, being as follows:

March 14, 1893,	$7,500
April 14, "	15,000
June 6, "	12,500
July 11, "	50,000
Sept. 11, 1894,	200,000
Jan. 2, 1895,	150,000

Deponent further says, that there are no records of any of the alleged transactions; that he had such charge of Mr. Vanderbilt's affairs at the times of said alleged transactions, that said transactions could not have taken place without coming to deponent's knowledge; and deponent further swears that no such transactions, or any of them, ever took place.

Deponent further says that from his whole experience of thirty-three (33) years with Mr. Vanderbilt in connection with the conduct of his affairs, it was his invariable custom to pay all his indebtedness, and settlements, by check and not in currency for amounts as large as even the smallest amount mentioned.

E. V. W. Rossiter.

Sworn to and subscribed before me, this 28th day of December, 1905.

Frederick Lincoln Merriam,
Notary Public, Westchester County
Certificate filed in New York County."

(Seal)

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Stipulations (*Wyman Vol.* 9), *p.* 4674.

Mr. Erwin: It is stipulated that the following affidavit of Mr. Edward V. W. Rossiter, now first vice president of the New York Central and Hudson River Railroad Company, be admitted in evidence as if taken before the Examiner in this cause under examination and cross-examination, but subject to the following:

That the words used in the said affidavit—"That no such transactions or any of them ever took place" refer to no transactions except transactions with said Cornelius Vanderbilt; and that it was intended to mean no such transactions with Mr. Cornelius Vanderbilt, or with anyone else took place as far as is within the knowledge of the witness.

That is agreed to, Mr. Stone?

Mr. Stone: Yes."

Why Carter Invented the Grand Central Depot Visits.

While R. F. Westcot was in Europe, from January 29, 1895, to May 12, 1896, the Greene and Gaynor divisions went on just the same as before, and deposits of currency, at corresponding dates, went on just the same as before. By referring to the statement of currency deposits (*ante*, p. 806), it will be seen that between January 29, 1895, and May 12, 1896, Carter deposited, either to his own credit or to the credit of R. F. Westcott, in accounts controlled by Carter, $113,827.08. Carter had to account for the source of that currency, because Mr. Westcott being in Europe, he could not get each separate deposit from Westcott at the time Carter made the deposits. He therefore invents the visits to Grand Central Depot, and has Westcott put $150,000 in the joint box, for Carter to bring out from time to time and invest, during Westcott's absence.

Exhibit 658 Vol. 29

STATEMENT OF THE AGGREGATE OF DIVISIONS, AGGREGATE OF DEPOSITS AND OF THE AGGREGATE OF INVESTMENTS HELD BY CARTER AT CORRESPONDING DATES, FROM EXHIBIT 319.

DIVISIONS.			Aggregate of Thirds, including $16,000 deposits in Carter's account from Division 1, not claimed to have been divided by thirds, and exclusive of $1,575, arbitrary allowance Carter's trip to New York.	See ante 806 Aggregate Currency, Bills and Specie deposited and 1 Check "M. W. C." for $2,000.	Aggregate Investments.
Number and Date of Division.		To Date of Following Divis on.			
No.	Date.				
		1893.			
1	1891 & 1892.	Jan. 3	$ 16,000.00	$ 16,000.00	$ 13,438.75
	1893.				
2	Jan. 3	Feb. 10	28,900.04	28,900.00	23,670.00
3	Feb. 10	Mch. 13	44,900.04	44,750.00	46,526.25
4	Mch. 13	April 14	60,900.04	51,750.00	52,670.00
5	April 14	May 8	81,618.15	69,650.00	66,391.25
6	May 8	June 5	96,618.15	84,650.00	79,053.75
7	June 5	July 11	109,118.15	97,150.00	91,316.25
8	July 11	Aug. 7	145,118.15	131,650.00	127,816.25
9	Aug. 7	Sept. 6	158,118.15	144,650.00	140,641.25
10	Sept. 6	Oct. 10	182,418.15	168,650.00	163,591.25
11	Oct. 10	Nov. 6	194,418.15	180,500.00	175,947.50
12	Nov. 6	Dec. 4	200,418.15	186,500.00	182,128.75
		1894.			
13	Dec. 4	Jan. 8	221,418.15	207,500.00	193,766.25
	1894.				
14	Jan. 8	Feb. 5	237,918.15	224,000.00	214,337.50
15	Feb. 5	Mch. 5	255,918.15	242,000.00	233,033.75
16	Mch. 5	July 9	263,918.15	249,400.00	244,197.50
17	July 9	Sept. 10	293,536.02	249,400.00	244,197.50
18	Sept. 10	Oct. 5	435,586.02	352,422.78	297,102.50
19	Oct. 5	Nov. 12	456,586.02	356,422.78	344,879.50
20	Nov. 12	Dec. 11	466,586.02	444,972.78	434,463.75
		1895.			
21	Dec. 11	Jan. 17	474,865.93	453,172.78	434,463.75
	1895.				
22	Jan. 17	Feb. 4	484,507.59	456,172.78	444,463.75
23	Feb. 4	Mch. 5	494,507.59	456,172.78	444,463.75
24	Mch. 5	April 8	501,578.47	476,172.78	438,013.75
25	April 8	May 22	524,886.80	493,499.86	469,770.00
26	May 22	June 7	533,981.82	493,499.86	443,255.00
27	June 7	July 5	552,725.63	502,999.86	497,102.75
28	July 5	Aug. 5	598,256.32	517,499.86	500,855.75
29	Aug. 5	Sept. 3	605,666.31	517,499.86	502,055.75
		1896.			
30	Sept. 3	May 12	605,802.91	570,399.86	570,545.16
	1896.				
31	May 12		611,836.35	570,399.86	570,545.15
	1897.				
32	July 6		738,528.02	578,299.86	
				Aug. 6, 1897.	700,431.51

[SUMMARY STATEMENT OF ALL COLLECTIONS OF COUPONS AND DIVIDENDS AND INTEREST NOTES, 1892 TO 1897.

The total amount of coupons, dividends and interest notes on all the securities, after date of purchase, claimed by the Government as having been purchased, in Exhibit 319, from maturing periods, Sept. 1892, to Aug. 1897, inclusive (but exclusive of stocks acquired in Savannah, and 8th Avenue rents), is shown by Exhibit 320 (Wyman) to have been		$77,171.69
Of these there were collected after Oct. 29, 1897, by R. E. Westcott, as agent for Carter, a few of the coupons which matured prior to Oct. 29, 1897, which had been uncollected, Exhibit 400 (Parsons), amounting to		650.00
		$76,521.69
Of the $76,521.69 there was deposited by O. M. Carter, and credited to Carter's individual bank accounts in New York and Savannah, Exhibit 320		$41,187.99
Of the $76,521.69 there were personally deposited by O. M. Carter, in accounts in Westcott's name, controlled by Carter, while Westcott was in Europe, Feb. 4, 1895, to May 12, 1896, with Reed & Flagg	$ 900.00	
R. F. Westcott, O. M. Carter, Atty., account, in Union Trust Co.	13,655.00	$14,555.00
(During the period of these deposits Carter admits that he drew out of that account $17,039.87 and applied it to his personal use. Deft. Exhibit 96F, p. 32.)		
Of the $76,521.69 there were certain coupons from certain bonds, which Carter calls his wife's estate bonds, which Carter admits Westcott collected and accounted to Carter for (Deft. Exhibit 96 A, B, C, D), amounting to.		$ 4,075.00
		$59,817.99
Of the $76,521.69 there were deposited personally by O. M. Carter to Westcott's credit in Union Trust Co., Dec. 23, 1896, per their letters to Carter acknowledging receipt (Exhibits 514, 515), coupons and interest notes amounting to	$ 2,961.20	
Less 5 M. Wabash, D. & Chi., included in $4,075 above, all accounted to by Westcott to Carter (~~See ante, p. ——~~)	125.00	$ 2,836.20
		$62,654.19
Total collection as above		$76,521.69
Handled by Carter as above		62,654.19
Handled by R. F. Westcott, accounted for to Carter, as shown below		$13,867.50

How Accounted for to Carter.

Of these $13,867.50 there were accounted for by Westcott to Carter—

Oct. 10, 1893.	30 Long Dock coupons, credited in account Reed & Flagg, adjustment (ante, p. 667)		$ 900.00
November, 1893.	Coupons collected through Van de Venter, exclusive of coupons from what Carter calls his wife's estate bonds, adjustment (ante, p. 671)—		
	10 Chi. & N.-W	$ 175.00	
	10 Mil., L., S. & W	300.00	$ 475.00
Dec. 8, 1893.	Coupons collected, exclusive of coupons from what Carter calls his wife's estate bonds, adjustment (ante, p. 678), through Van de Venter—		
	5 L. S. & M. So	$ 175.00	
	Through Union Trust Co.—		
	10 Chi., Mil. & St. P $350.00		
	25 N. Y., Lack. & W 750.00	$1,100.00	$1,275.00
Feb. 6 and 8, 1894.	Coupons collected by R. F. Westcott, and accounted for, adjustment (ante, pp. 690 and 695)—		
	10 Chi. & N.-W	$ 175.00	
	10 Mil. & St. P	400.00	
	2 Iron Mountain	50.00	
	5 N. J. Junction	100.00	$ 725.00
Mch. 10, 1894.	Coupons, 10 Del. & Hudson		$ 350.00
April 6, 1894.	Coupons accounted for, adjustment (ante, p. 696)—		
	30 Long Docks		$ 900.00
May 1, 1894.	Coupons accounted for, adjustment (ante, p. 681), exclusive of coupons from what Carter calls his wife's estate bonds—		
	5 Wabash 1st	$ 125.00	
	10 M. L. S. & W	300.00	
	10 Chi. & N.-W	175.00	$ 600.00
June 1, 1894.	Coupons accounted for, adjustment (ante, p. 699), exclusive of coupons from what Carter calls his wife's estate—		
	20 L. S. & M. S		$ 700.00
Sept. 11, 1894, to Feb. 2, 1895.	Coupons accounted for, adjustment (ante, p. 730)—		
	Sept., 1894, coupons	$ 350.00	
	Oct., 1894, coupons	1,000.00	
	Nov., 1894, coupons	1,412.50	
	Dec., 1894, coupons	1,350.00	
	Jan., 1895, coupons	2,092.50	
	Feb., 1895, coupons	2,300.00	
	Amt Carried Forward	$8,505.00	$5,925.00

	Total brought forward		$ 8,505.00	$5,925.00
	Less collection of what Carter calls his wife's estate bonds:			
	Nov., 1894, coupons—			
	5 Wabash 1st	$125.00		
	5 Chi. & E. Ill	125.00		
	5 C. & O	125.00		
	Dec., 1894, coupons—			
	10 C. St. P. M. & O	300.00		
	10 Morris & Essex	350.00		
	Jan., 1895, coupons—			
	5 Wabash D. & C	125.00	$1,150.00	$ 7,355.00
Feb., 1897.	Coupons accounted for, adjustment (ante, p. 792)—			
	30 U. S. 5%			$ 375.00
May, 1897.	Coupons accounted for, adjustment (ante, p. 792)—			
	17 U. S. 5%			$ 212.50
	Accounted for by Westcott to Carter			$13,867.50

It is therefore seen that there has been a full accoutning from Westcott to Carter for all collections made by R. F. Westcott, for every coupon, all dividends and interest notes collected by Westcott, from securities purchased in the Divisions shown by Exhibit 319.

KNOWN DISBURSEMENTS FOR RELATIVES OF OBERLIN M. CARTER FROM JANUARY 1, 1893, TO MAY 1, 1897.

(From Government Exhibit 620.) Vol. 29.

Year.	For I. S. Carter.	For D. P. Carter.	For L. M. Carter.	For Emerson Lucas.	Total.
1893	$ 1,510.00	$ 1,000.00	$ 626.10	$ 647.49	$ 3,783.59
1894	2,400.00	.....	1,385.70	613.55	4,399.25
1895	3,684.02	200.00	1,350.75	700.00	5,934.77
1896	1,750.00	2,350.00	325.00	750.00	5,175.00
1897 (Jany., Feb., Mch., April)	2,000.00	425.00	.....	200.00	2,625.00
Totals	$11,344.02	$ 3,975.00	$ 3,687.55	$ 2,911.04	$21,917.61

This is taken from Government Exhibit 620, which is admitted by Carter to be correct (Wyman, Vol. 3), p. 1471, copied (Wyman, Vol. 11, Binder A.) Vol. 14 C

COMPARISON OF CARTER'S INCOME WITH HIS EXPENDITURES.

A comparison of Carter's income with his expenditures shows that he was possessed of a frugal mind. At least, that he proportioned his expenditures to the size of his income, and encroached but little upon the capital of his stealage.

This comparison is made in the sheet Exhibit 323, Vol. 29 com-

piled from the other exhibits in evidence, to which reference is made. Exhibit 323, is identified, (Wyman Vol. 1), p. 144, and copied in Binder B Wyman Vol. 12.

It shows from 1890 to 1897, Carter's gross income including his salary and commutation, and including the known income from the investments traced to him. It also shows the amount of Carter's personal expenditures, not investments. The character of these expenditures is indicated by a few of the larger items which were called over and taken down by the examiner for the years 1893, 1894, 1895 and from part of 1896. (Wyman Vol. 1), p. 72 *et seq.*

1895

Jan.	14th	Tiffany & Co., jewelry,	$ 197.55
Mch.	2	Bastable & Mannigan, tailors,	120.00
Mch.	12	J. M. Jenkins, tailor,	96.50
June	12	Hatfield & Son, clothing,	111.38
June	13	D. P. Carter,	250.00
June	29	I. Stanton Carter, present,	200.00
July	1	Mary Gilbert, services	225.00
July	6	I. Stanton Carter, present to brother,	2,500.00
Oct.	12	Mrs. E. D. Griffin, Schooling Emerson,	500.00
Oct.	19	Wm. Shaws, pictures,	496.74
Oct.	19	Davis, Collamore & Co., china,	101.75
Oct.	19	Karl L. Brandt, pictures,	334.
Nov.	5	Archer, Merrell & Condit,	180.78
Nov.		Gorham Mfg. Co., Misc. purchases,	284.25
Dec.	7	B. D. Greene, favor J., for services,	910.
Dec.	23	P. D. Carter, Christmas,	200.
Dec.	24	O. M. Carter, cash for E. M. T.	400.

1896

Feb.	29	S. P. Avery Jr., painter,	400.
Mch.	4	Wm. Schaus—pictures,	650.
Mch.	21	D. P. Carter,	250.
Apr.	1	S. P. Avery Jr., artist,	400.
Apr.	15	Tiffany & Co.	157.50
June	2	Insurance,	453.
June	15	Tiffany & Co., Jewelry,	156.75
July	6	John D. Fish, for horse,	250.
July	13	I. Stanton Carter,	500.
July	31	O. M. Carter,	1,400.

Remembering that during the years 1895 and 1896, Carter's salary and commutation allowances was only $3,032, per annum, the character of his expenditures indicates another source of income. But as we have seen, this source was not his father-in-law.

129 Exhibit 323, comparison of Carter's income and expenditures.

1890.	Gross expenditure,	$4,306.60
"	Gross income from salary and securities,	2,208.
1891.	Gross expenditures,	$5,897.83
"	Gross income from salary and securities,	2,961.91
1892.	Gross expenditures,	$8,354.24
"	Gross income from salary and securities,	4,044.50
1893.	Gross expenditures,	$14,982.74
"	Gross income from salary and securities,	9,752.00
1894.	Gross expenditures,	$14,410.88
"	Gross income from salary and securities,	16,523.17
1895.	Gross expenditures,	$20,113.92
"	Gross income from salary and securities,	27,363.34
1896.	Gross expenditures,	$28,611.67
"	Gross income from salary and securities,	31,349.97

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CARTER'S POSSESSION OF THE SECURITIES JUST BEFORE SAILING FOR EUROPE AUGUST 7, 1897.

That Carter had possession, just prior to his sailing for Europe, August 7, 1897, of all the securities subsequently included in the receipts given by Carter to Westcott, of October 11, 1897, and October 29, 1897, is shown by the following facts: Exhibits 269 Vol. 24 P. 11261
272 " " 11275-7

Safety Deposit Boxes.

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(1) It is shown by Exhibit 424 that there was a joint box in Garfield Safe Deposit Company in name of O. M. Carter and his wife, M. W. Carter, taken August 8, 1892. Mrs. Carter died December 7, 1892, and Carter continued the box until July 13, 1893.

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(2) It is shown by Exhibit 423 that O. M. Carter took a safety deposit box in Mercantile Safe Deposit Co. of New York, in his own name, March 16, 1893, and on April 15, 1893, he added the name of I. Stanton Carter to it. On September 18, 1893, he increased the size of the box. That box was continued until Carter relinquished it February 8, 1899.

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(3) It is shown by Exhibit 425 that R. F. Westcott and wife had a safety box in Safe Deposit Co. of New York, taken March 1, 1884, and relinquished October 1, 1894.

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(4) It is shown by Exhibit 425 and 618 that there was a safety deposit box rented in the joint names of R. F. Westcott and O. M. Carter, April 14, 1893, which was changed October 3, 1894, to a large safe, No. 258, still in joint names of Westcott and Carter, which was so continued until July 6, 1897, at which time, July 6, 1897, R. F. Westcott took that box in the name of R. F. Westcott and wife, and rented a new smaller box, No. 2389, in the joint names of R.

P. 821. Note

*The evidence does not show who paid the rent on the box held in the joint names of Westcott and Carter except in two instances, Oct. 14, 1896, and Nov. 19, 1896, and on both of these occasions it was paid by Carter. (Vol. 14, p. 6203.) Box 2389, rented by Westcott and Carter July 6, 1897, was too small to hold the securities. Carter admits this. (Vol. 14, p. 6393.) It would seem certain that Carter had all of his securities in his own box in the Mercantile Safe Deposit Co. after July 6, 1897, until he came back from Europe.

That he kept his securities largely in the same box prior to going to Europe is indicated by the coupon bag of May 1, 1894. (*Ante*, p. 681, and see Carter's collection of the coupons on all of the securities on which coupons were collected in July, Aug. and Sept., 1897, *post*, p. 823.) And see the deposit to Carter's personal credit in U. T. Co. of all the coupons and dividends in 1896. (Exhibit 320, Vol. 29.)

F. Westcott and O. M. Carter. Carter on his return from Europe changed this box 2389 to a larger box, No. 1580, on September 15, 1897, taken in the joint names of R. F. Westcott and O. M. Carter. Carter relinquished this box, No. 1580, and removed the contents December 13, 1897.

The Joint Box Westcott and Carter.

Carter admits that the securities in controversy, certainly up to July 6, 1897, were kept in the safety box standing in the joint names of Westcott and Carter, and that he would go to the box and take coupons from the securities. In fact, he claims that Westcott had a habit of changing the bonds which Carter claims as his wife's estate bonds, from a package which had Carter's name on it, and substituting some from what he claims was Westcott's bonds, so frequently that he could not tell which was his wife's estate bonds and which not. (*Ante*, p. 637-8.)

Carter claims, however, that the change of the large joint box, July 6, 1897, previously held in the joint names of Westcott and Carter, and the renting of the smaller box on that date in the joint names of Westcott and Carter, precluded the idea that these large amounts of securities were kept in the smaller box.

But at that time Carter was preparing for his trip to Europe, and there is no reason why he should not have transferred all of the securities to the large box he had in the joint names of his brother and himself, in the Mercantile Safe Deposit Co. The dimensions of that box were 18½ by 10 by 6 inches (Exhibit 423). Vol 28

P. 822. Note

*Carter never had access to any safety box rented in the joint or individual names of R. F. Westcott and wife or either of them. (Vol, 14, p. 6204–5.)

COLLECTION OF COUPONS, ETC., WHICH FELL DUE AT THE LAST MATURITY PERIOD PRIOR TO RECEIPTS OF OCT. 11 AND 29, 1897 (EXHIBITS 269 AND 272), ON ALL SECURITIES THEREIN RECEIPTED FOR BY CARTER TO R. F. WESTCOTT.

DESCRIPTION.	Reference to Exhibit 319. Vol 30	Prior Coupon Div. & Int. Period.	By Whom Collected.	Exhibit No.	Date Collected.	Amount Collected.
		(October 11, 1897, Receipt.)				
13 U. S. 5's	Division 20 & 31	Aug. 1897	O. M. Carter	251 Vol 31	Aug. 3, 1897	$162.50
10 Mil. & St. P. 8's	" 13	" "	"	" "	" " "	400.00
5 Jol. & N. Ind. 7's	" 19	July "	"	" "	July 13 "	175.00
15 N. Y. Cent. 7's	" 14 & 15	" "	R. E. Westcott % O. M. Carter	400 Vol 28	May 16, 1898	525.00
20 Lake Shore Seconds 7's	" 12,14 & 15	June "	O. M. Carter	251 Vol 31	June 2, 1897	700.00
		(October 29, 1897, Receipt.)				
5 Ches. & Ohio 5's	Division 3	May, 1897	O. M. Carter	251 "	May 10, 1897	125.00
15 Del. & Hud. 7's	" 9 & 25	Sept. "	R. E. Westcott % O. M. Carter	400 Vol 28	May 16, 1898	525.00
10 Chi. St. P. Minn. & O. 6's	" 5	June "	O. M. Carter	251 Vol 31	June 1, 1897	300.00
15 Chi. & N.-W. 7's	" 5 & 25	Aug. "	"	" "	Aug. 3 "	262.50
30 United N. J. 4's	" 18, 19, 24 & 25	Sept. "	R. E. Westcott % O. M. Carter	400 Vol 28	May 16, 1898	600.00
10 Mil. Lake Sh. & West. 6's	" 7	May "	O. M. Carter	251 Vol 31	" 10, 1897	350.00
50 Long Dock 6's	" 8 & 27	Oct. "	R. E. Westcott % O. M. Carter	400 Vol 28	" 16, 1898	1,500.00
30 N. Y. Lack. & West. 6's	" 10,11&25	July "	O. M. Carter	251 Vol 31	July 2, 1897	900.00
5 N. J. June. 4's	" 10	Aug. "	"	" "	Aug. 3 "	100.00
20 N. Y. Lack. & West. 5's	" 18	" "	"	" "	" " "	500.00
10 Morris & Essex 7's	" 5	June "	"	" "	June 1 "	350.00
3 Morris & Essex 4½'s	" 19	July "	"	" "	July 2 "	67.50
5 Wabash D. & C. 5's	" 3	" "	R. E. Westcott % O. M. Carter	400 Vol 28	May 16, 1898	125.00
10 Chi. Mil. & St. P. 7's	" 6	" "	O. M. Carter	251 Vol 31	July 2, 1897	350.00
4 U. S. 5's	" 19	Aug. "	"	" "	Aug. 3 "	50.00
200 Shares Del. & Hud. Canal Co. Stock	" 28, 29, 30	Sept. "	"	Def. 96F Vol 30 p 590	Sept. 15 "	250.00
10000 Receivers' Cert. B. & O. R. R.	" 31	June "	"	251 Vol 31	June 2 "	300.00
10000 T. M. Cunningham Note	" 27	July "	"	" "	" 25 "	275.00
10000 Berne Gordon Note	" 31	" "	"	" "	" 30 "	300.00
15000 John Lyons Note	" 27	" "	"	" "	July 10 "	450.00
6000 Thos. Martin Note	" 28, 29, 30	Nov. 1896, Ann.	"	58, 322 Vol 30 p 590	Dec. 8, 1896	422.99

That Carter had possession of the securities subsequent to July 6, 1897, is shown by the fact that he deposited in his own bank account, before he left for Europe, the August, 1897, coupons on every one of the securities from which coupons were collected prior to the receipts of October 11 and 29, 1897.

Indeed, that Carter had possession, just prior to leaving for Europe, of every security which was afterwards included in the receipts of October 11, 1897, and October 29, 1897, is shown by evidence of the highest character, viz., that he collected just before he went to Europe all the coupons and dividends and interest notes falling due at the last maturity period, which were collected by anybody prior to the receipts of October 11 and October 29, 1897. This is shown by the following table prepared by Mr. Johnson from Exhibit 599 (Wyman Vol. 3, p. 1556), and which is verified by the exhibits therein referred to.

That Carter on his return from Europe in September, 1897, became frightened at the investigation going on, of which Connally told him on his arrival at Quarantine Station, N. Y., on September 10, 1897, (*Ante*, p. 24), and delivered to Greene and Gaynor all the securities which we have just seen Carter had possession of just prior to leaving for Europe, August 7, 1897, (*ante*, p. 821), and that Greene turned them over to R. F. Westcott in a day or two afterwards, at Carter's request, is fully established by the testimony of Dr. F. P. Solley (*ante*, p. 648). See also R. F. Westcott's testimony (*ante*, p. 651) and the grounds stated upon which it is claimed to be admissible. (*ante*, 651 to 654.)

The October 11, 1897, *Receipt, Carter to Westcott.*

Complainant's Exhibit 269. Vol. 24 P. 11261

Received New York October 11, 1897, from R. F. Westcott the following bonds, sixty-three in all:

13 U. S. 5*s*	34454, 34479, 34478, 34477, 34452, 34455. 55167, 34480, 34481, 34482, 34483, 34450, 34449.
10 Mil. & St. P. 8*s*	668, 2369, 3174, 3246, 3599, 2207, 2196, 2115, 2100, 1324.
5 Jol. & N. Ind. 7*s*	318, 319, 320, 321, 322.
15 N. Y. Cent. 7*s*	15755, 13194, 13193, 09472, 07905, 07904, 06328, 06327, 15759, 15758, 15757, 15756, 07903, 07902, 07901.
20 Lake Shore Seconds 7*s*	10605, 10604, 10563, 10562, 10561, 10560, 10460. 10459, 10458, 10457, 8466, 8465, 6746, 6745, 6744, 1817, 1813, 1810, 1567, 1568.

O. M. Carter.

Purpose of October 11, 1897 *Delivery.*

The purpose of the delivery by R. F. Westcott to Carter, October 11, 1897, of these $63,000 par value of securities, which Carter is shown to have had possession of in August, 1897, and which had gotten into Westcott's hands in September, 1897, is sufficiently manifest from the circumstances which then surrounded Carter, and the use to which he immediately applied a large part of the securities so delivered to him.

The Board of Inquiry had commenced its hearing in Savannah, September 23, 1897, and had adjourned to meet for a further session in New York.

Sale of Securities by Carter's Lawyers.

The following sales of securities, included in receipt of October 11, 1897, followed:

Oct. 12, 1897, sale by L. L. Kellogg, through A. W. Kilbourne & Co., brokers, Exhibit 417 (Parsons). 13 M—United States Bonds, 5's, proceeds $14,990.62

Mch. 12, 1898, Collected by L. L. Kellogg, Exhibit 418 (Parsons). 10 M—Mil. & St. Paul 8's, proceeds, 10,000.00

The purpose of Carter was evidently to raise money for his defense, provide lawyer's fees, etc.

Carter's Contention as to the October 11, 1897, Receipt.

Carter in his statement of transactions between R. F. Westcott and himself, Deft's Exhibit 96F, p. 42, which he prepared and offered in evidence in January, 1905, over three years after he had filed his answer, and after the Government had closed its case on the direct, for a year, claimed, in consideration of the $63,000 par value of bonds which are described in that receipt of October 11, 1897, he (Carter) sold R. F. Westcott Carter's half interest in the Orange, N. J. property, which had cost Carter $63,020.35 (*ante*, p. 786), and also Westcott required him (*ante*, p. 796-7) to throw in the 8th avenue property (which had cost $39,813.75, *ante*, p. 718). He further testified that the conveyance of the title to these properties, alleged to have been supervised by Mr. Thatcher, a lawyer, was simply by Carter handing back to Westcott the recorded deeds, by which Westcott had previously conveyed the title to Carter (*ante*, p. 796-7).

In other words, he catches his son-in-law in a tight place and trades him $63,000 of bonds for $102,834.10 of real estate. Then he has Mr. Westcott get furious with him when he discovers the record of the deed, and eighteen days later, October 29, 1897, make him a present of the same real estate, by simply delivering the deeds back to Carter (*ante*, p. 796-7).

But Carter does not discover that Westcott has given him back the 8th avenue property until a year afterward, when he finds the old deed of 1895 in R. E. Westcott's hands, among other papers delivered to Carter October 29, 1897 (*ante*, p. 796-7).

October 29, 1897. *Receipt of Carter to Westcott, Complainants Exhibit* 272. Vol 24 / 1275-77

Received, New York, October 29, 1897, from R. F. Westcott, the following instruments:

5 Ches. & Ohio 5s	21025, 21026, 21027, 21028, 21029, Last Coupon Nov. 1897.
15 Del. & Hud. 7s	1649, 1648, 841, 528, 293, 122, 842, 840, 593, 125, 124, 123, 121, 83, 82. Last coupon Sept. 1897.
10 Chic., St. P., Minn. & Om. 6s	21117, 21118, 21123, 21116, 20242, 19282, 16672, 16102, 15926, 2093. Last coupon Dec. '97.
15 Chi. & N. W. 7s	13216, 13213, 13212, 13211, 13209, 13210, 13208, 13207, 13206, 13205, 7527, 7526, 7525, 7524, 7523. Last coupon Nov. 1897.
30 United N. J. 4s	8650, 8651, 8652, 8653, 8654, 8655, 8656, 8657, 8658, 8659. Last coupon Sept. 1897. 17312, 17313, 17314, 17315, 17316, 17396, 17397, 17398, 17399, 17400, 18442, 18443, 18444, 18445, 19179, 19186, 19397, 19398, 19399, 19400. Last coupon Sept. 1897.
10 Mil. Lake Sh. & West 6s	697, 698, 699, 845, 844, 843, 847, 846, 848, 839. Last coupon Nov. 1897.
50 Long Dock 6s	2601 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2689, 2690, 2691, 2692, 2693, 2695, 2696, 2697, 2698, 2699, 2700, 3611, 3610, 3609, 3608, 3607, 3606, 3605, 3604, 3603, 3602, 2202, 2201, 803, 802, 183, 182, 181, 180, 2837, 2836, 2694. Last coupon October, 1897.

30 N. Y. Lack. & West. 6s — 11350, 11349, 11348, 11347, 11346, 11310, 11309, 11308, 11307, 11306, 11315, 11314, 11313, 11312, 11311, 11305, 11304, 11303, 11302, 11301, 9500, 9499, 9498, 9497, 9496, 9495, 9494, 8537, 8536, 8535. Last coupon Jan., 1898.

5 N. J. June. 4s — 940, 941, 1256, 1258, 1489. Last coupon Feb., 1898. (O. M. C.)

20 N. Y. Lack. & West. 5s — 1036, 1037, 1044, 1045, 1038, 1171, 1172, 1039, 1173, 1174, 1040, 1175, 1176, 1041, 1177, 1042, 1178, 1179, 1043, 1180. Last coupon Feb., 1898.

10 Morris & Essex 7s — 8114, 8113, 8112, 8111, 8110, 8109, 2983, 1495, 9308, 9307. Last coupon Dec. 1897.

3 Morris & Essex 4½s — 848, 1120, 1121. Last coupon Jan., 1898.

5 Wabash D. & C. 5s — 1739, 1621, 1736, 1731, 1738. Last coupon July, 1897.

10 Chi. Mil. & St. P. 7s — 5447, 5446, 5445, 5444, 6318, 6440, 525, 5441, 5442, 5443. Last coupon Jan., 1898.

4 U. S. 5s — 17461, 17458, 17456, 17453. Last coupon Nov. 1897.

2 Certificates for 100 shares each in capital stock of Del. & Hud. Canal Co. Nos. 25868, 25869, in my name.

2 Receivers Certificates B. & O. R. R. Co. for $5000.00 each, Nos. 791 & 792. Coupons Dec. 1, 1897, attached.

7 Promissory notes of T. M. Cunningham to Robert F. Westcott for $275.00 each, dated June 29, 1895. Endorsed "without recourse" by Robt. F. Westcott.

Deed to secure foregoing notes and others by T. M. Cunningham to Robert F. Westcott, dated June 29th, 1895.

1 Promissory note of Beirne Gordon to R. F. Westcott for $10,000.00, and

9 Promissory notes of same to same for $300.00 each, all of said notes being dated Nov. 4th, 1896, and endorsed "without recourse" by R. F. Westcott.

Deed, Beirne Gordon to R. F. Westcott, dated Nov. 4th, 1896, to secure foregoing notes and others.

1 Promissory note of John Lyons to Robert F. Westcott for $150000.00 with covenant of Insurance, etc., annexed June 29, 1895.

(O. M. C.)

1 Promissory note of John Lyons to Robert F. Westcott for $15000.00 dated June 29th, 1895, and endorsed "without recourse" by the payee.

1 Promissory note of same to same of same date similarly endorsed for $450.00.

1 Promissory note of same to same of same date similarly endorsed, for $450.00.

Deed to secure the foregoing notes and others by John Lyons to Robert F. Westcott, dated June 29, 1895.

1 Certificate of Insurance, dated June 29th, 1895, executed by Dearing & Hull, agents.

Deed, J. W. Howie and J. F. Bragg, as executors, to R. F. Westcott, dated Nov. 27th, 1894.

Policy of Insurance to Robert F. Westcott of title to property conveyed in foregoing deed.

Bond & Mortgage, Thomas Martain to O. M. Carter, dated Nov. 8th, 1895.

Receipt, A. Minis to O. M. Carter dated, Nov. 11th, 1896.

Receipt, Thomas Martin to A. Minis, atty., dated Nov. 21st, 1895.

Oberlin M. Carter.

P. 829. Note

*It is significant that Westcott had revoked his power of attorney to Carter on Sept. 14, 1897. (Vol. 11, p. 5292.) And that on Oct. 29, 1897, he executed a codicil to his will revoking the nomination of Carter as one of the executors of his will. (Vol. 14, p. 6565.)

Circumstances Surrounding the Taking of Receipt of October 29, 1897.

We have already referred to the testimony of Dr. F. P. Solley, as to Mr. R. F. Westcott's statements to him, made while the securities were in Westcott's possession, and as a part of the *res gestae* of the redelivery to Carter on October 29, 1897. (*ante*, p. 648.)

It will also be remembered that, at the same time of the execution of the receipt of October 29, 1897, there was also a formal settlement contract signed by Carter and Westcott, witnessed by Henry L. Stimson, October 29, 1897 (Exhibit 283), reciting the full details of the Orange, N. J., settlement.

Mr. Henry L. Stimson was then Mr. R. F. Westcott's attorney. He could not testify, under the law, as to private conversations between Mr. Westcott and himself, as an attorney. But he was free to testify to what took place in Carter's presence on the execution of the receipt, and as to the paper which he was called upon to sign as a subscribing witness. His testimony is set out in the record (Wyman Vol. 9), p. 4609 to 4614.

Mr. Stimson testified (Wyman Vol. 9), p. 4612:

"A. I do not recall that Mr. Westcott said anything in the presence of Captain Carter as to the title to the securities, except to turn them over to Captain Carter, which he did. I remember that Captain Carter, after he had taken the securities, either alluding to a number of bonds which were among the securities, said to Mr. Westcott substantially this: 'Daddy, I want you to take these.' Or 'Daddy, I want to give these to you.' Something substantially to that effect, and that Mr. Westcott replied: 'No.' Either verbally or with some gesture of dissent. Captain Carter put the bonds which he had referred to back with the others and took them all."

Carter Never Claimed the Securities Before Court Martial In 1898.

Before the Court Martial in 1898, Carter never once claimed any gift to him October 29, 1897, of these properties aggregating nearly half a million dollars.

Carter Denies Ownership Before Attorney General In 1898-99

In Captain Carter's annotated acount, Exhibit 57, which he furnished the Attorney General in 1898-9 (*ante*, p. 539) in which he tried to show that he did not even then own the securities, the income from which had been traced into his account, the following annotations were made by Carter in his own handwriting on collections made long after the receipt of October 29, 1897. The existence of that receipt was not known to the Government at that time:

Extracts from Carter's Account in the Union Trust Company Annotated by Him In 1899.

May 16, 1898.	By cash, notes—		
	John Lyons $300		
	B. Gordon 450	"Collection for Westcott	$1,025.00
	T. M. Cunningham .. 275		
May 24, 1898.	To cash. "Part collection remitted to Westcott".....		800.00
July 7, 1898.	By cash, note—		
	T. M. Cunningham .. $275		
	B. Gordon 300	"Collection for Westcott"	$1,025.00
	Jno. Lyons 450		
July 11, 1898.	To cash. "Collection R. F. Westcott, remitted to him"		$1,025.00
July 16, 1898.	By cash. "Westcott"		850.00
Nov. 17, 1898.	By cash. "Do."		500.00
Dec. 23, 1898.	By cash. "Do."		750.00
Dec. 27, 1898.	By cash, notes—		
	T. M. Cunningham .. $275		
	Jno. Lyons 450	"Collection for Westcott"	$1,025.00
	B. Gordon 300		
April 4, 1899.	By cash. "From Westcott"		$1,400.00
May 17, 1899.	By cash. "From Westcott"		987.50

Carter's Present Explanation.

Carter now claims that he had placed all the securities which he got October 29, 1897, in the hands of R. E. Westcott, to hold as his agent; that he used "R. F. Westcott" by mistake in the above annotations, when he really meant R. E. Westcott.

But he nowhere in any of his statements says "R. E. Westcott" once, and he never once disclosed the fact that he had then a half million of these securities then in the hands of R. E. Westcott, or J. H. Paul, being held for Carter himself.

Carter's Present Claim Conflicts with His Answer.

In his sworn answer to the bill in this cause, filed February 1, 1902, at a time when Carter knew the facts as well as he could know them afterward, Carter stated: (see printed answer, pp. 19-20): Vol I 3136

> "This defendant denies:
> That said Westcott delivered back any securities to this defendant at any time, or that any of the securities described in said receipts of October 11, 1897, and October 29, 1897, ever belonged to this defendant, or that he ever had any interest therein, directly or indirectly, until the same were respectively given to this defendant as a pure and original donation by said Westcott, at the time of said respective receipts in October, 1897."

Carter's Change of Position.

Carter waited until the Government produce before him for inspection every scrap of paper with his writing on it (*ante*, p. 541), took a year to incubate over a possible defense, and came on the stand in January, 1905, with his diary entries and a theory of defense wholly in conflict with the above sworn answer.

(1) It conflicts in that he now claims the $63,000 of securi-

ties in the October 11, 1897, receipt, were received, not as an original donation at the date of the said receipt, but in exchange for Carter's half interest in the Orange, New Jersey, property and for the 8th avenue property.

(2) It conflicts in that he now claims that the following bonds, which are described in the receipt of October 29, 1897, to wit:

5 M—Ches. & Ohio, Nos. 21025 to 21029.
10 M—Chic., St. P., M. & Om., Nos. 21117, 21123, 21116, 19282, 16672, 16102, 15926, 2093.
10 M—Morris & Essex 7s, Nos., 8114, 8113, 8112, 8111, 8110, 8109, 2983, 1495, 9308, 9307.
5 M—Wabash, D. & Chi. 5s, Nos. 1739 1621, 1736, 1731, 1738

were the bonds which constituted his wife's estate bonds, from May 2, 1893 (see *ante*, p. 628) until his alleged trade with Westcott, May 10, 1897 (see *ante*, p. 794).

Not only that, but he now produces his Defendant's Exhibit 96 A, B, C, D, F, in which he attempts to show a vast number of settlements between Westcott and himself, in which he makes Westcott and himself recognize those particular bonds as Carter's bonds. And this too in the face of his sworn denial in hs answer to the bill:

"That any of the securities described in ~~the~~ said receipts of October 11, 1897, and October 29, 1897, ever belonged to this defendant, or that he ever had any interest in them directly or indirectly, untilt he same were respectively given to this defendant as a pure and original donation by said Westcott at the time of said respective receipts in October, 1897." Vol. I, 1316

Carter's Attorney Discovers the Conflict.

After Carter had gotten nearly through his direct testimony Mr. Stone discovered the conflict between Carter's testimony and the allegations of Carter's answer he had filed three years before (Wyman Vol. 2), p. 446. He suggested he be allowed to amend his answer, but complainant's attorney put him on notice that would be resisted for the reasons stated (Wyman Vol. 2), p. 447.

Under the same conditions as exist here where a plaintiff, in a position to know the facts, alleged one state of facts in the pleadings, and attempted afterwards to amend the pleadings by asserting facts contrary to the first position taken, the Supreme Court of the United States held that it was not only proper to refuse to allow the amendment, but also, that it was proper to dismiss the case out of court.

> "An amendment wholly inconsistent with the allegations of the original petition cannot be allowed."
>
> "But if the order allowing an amended petition to be filed could be lawfully made in this case, so long as final judgment had not been entered, it was equally within the power of the Court to modify that order so as to treat the amendment as a mere addition to the original petition, and thus to preclude the plaintiff from contesting a material fact, within her own knowledge, which she had once solemnly averred."
>
> *Henderson* v. *Louisville, etc., R. R.*, 123 U. S., 64-65.

THE EDMUNDS REPORT.

of Oct 8-1898

Under notice to produce from the defendants, the complainant produced from the files of the Judge Advocate General's office a document which is endorsed:

"Hon. Geo. F. Edmunds,
Brief in the Carter."

offered
It is in evidence as Deft's Exhibit 117, Wyman. Vol. 18, p. 894
and objected to by the Government Vol. 17 G
There is no evidence other than what may be inferred from the document itself that there was any reference of the matter to Ex-Senator Edmunds at all. It appears from the report itself that he made the report in pursuance of a verbal request of the then Secretary of War, Mr. Alger, in pursuance of some conversation between them.

I think that the subsequent developments show that it was a private reference made by the Secretary for his own enlightenment at the request of Carter's solicitors.

It appears that the Gevrnment officials would not pay Mr. Edmunds' bill, as the reference was without authority, and that Carter paid it, or caused it to be paid by Mr. Duval and refunded the money to him. See Carter's testimony (Wyman Vol. 6), p. 410. Vol 17 p. 898-99

The report of Ex-Senator Edmunds seems to have gone off mainly on the alleged inadmissibility of the papers from Box B. 31, which was ruled differently by Mr. Attorney Griggs, (*ante*, p. 35).

He also states that no legal proof in the Court Martial that Carter had gotten any of the fruits of the Greene and Gaynor contracts, and showed no motive for the bad engineering shown. On this point Mr. Griggs also differed, though the evidence there was far more circumstantial than it is now Counsel for defendants now openly admits that the evi-

dence of the divisions since proved up in 1900 before Commissioner Shields, and more fully before this Court, does show that the money which bought about half a million dollars of these securities, came from Greene & Gaynor, but claims it was to Westcott as a partner, but that Carter did not know of their relations. Senator Edmunds found enough, however, to recommend Carter's dismissal from the Army.

P. 836. Note

*Edmunds' report says:

"Taking the whole evidence, including the correspondence and the bank books and papers together, *it is not proved that Carter received any benefit* from the allowance and payment of these undue accounts, and *in the absence of a motive existing in the mind of Carter* to assist the company in defrauding the United States, * * * I do not think it proved beyond a reasonable doubt that Carter approved the vouchers and paid the money knowing that the contract had not been complied with." (Vol. 18, p. 8989.)

The proof subsequently obtained shows that Carter directly or indirectly was the beneficiary of one-third of the profits of the contracts, and supplies the *motive* necessary to show the intent and fraudulent conspiracy.

As against the conclusions reached by Senator Edmunds, even on the points he found in Carter's favor, we have the following:

1st. The conclusions of the Board of Officers, composed of Colonel Gillespie (later General Gillespie, Chief of Engineers), Major H. M. Adams of the Corps of Engineers and Major C. W. Raymond of the Corps of Engineers, who reported against Captain Carter for Court Martial.

2nd. The finding of the Court Martial, composed of thirteen army officers, of which General Ewell S. Otis was president, and which convicted Captain Carter, among other things, of conspiracy to defraud, knowingly causing false claims to be presented for payment, and embezzlement.

3rd. The finding of Atty. Genl. Griggs Sept. 29, 1899, on review of the Court Martial record, that the conviction for the above offenses was sustained by the evidence, which report was approved by President McKinley. (22 Opinions Atty. Generals, 589.)

4th. The decision of the Supreme Court of the United on habeas corpus that Carter's conviction and imprisonment on the above three charges was proper. (*Carter* v. *McClaughry*, 183 U. S., p. 365.)

5th. The decision of the Circuit Court of Appeals in reviewing the verdict of the jury convicting Greene & Gaynor for the same conspiracy with Carter, and for presenting the fraudulent claims, and for aiding and abetting Carter in the same embezzlement, holding that the evidence showed that they were properly convicted.

Greene et al. v. *U. S.*, 104 F. R., 401.

6th. Judgment of Supreme Court refusing *certiorari* in that case.

Greene et al. v. *U. S.*, 207 U. S., 596.

HISTORY OF SECURITIES, ETC., SUBSEQUENT TO RECEIPTS OF OCTOBER, 1897.

Receipts by Kellogg & Rose from Diverted Funds.

1897.

Oct. 12, Sale by L. L. Kellogg, through A. W. Kilborne & Co., Brokers, N. Y., Exhibit 417, Parsons, 13 M, U. S. Coupon 1904, 5% Bonds. These bonds were bought, see Exhibit 319, Divisions 20 and 31, ... $14,990.62

Nov. 23, Sale by L. L. Kellogg, through Kendall & Whitlock, Brokers, N. Y., Exhibit 344, Shields. 200 shares Delaware & Hudson stock. This stock was bought, see Exhibit 319, Divisions 28 to 30, ... $21,875.00

1898.

Mch. 12, Redemption by L. L. Kellogg, 10 M, Milwaukee & St. Paul 8% Bonds, Exhibit 418, Parsons. These bonds were bought, see Exhibit 319, Division 13, ... $10,000.00

Apr. 27, Sale by L. L. Kellogg, through A. W. Kilborne & Co., Brokers, N. Y., Exhibit 417 Parsons. 10 M, Baltimore & Ohio 6% Recvrs. Certificates. These certificates were bought. See Exhibit 319, Division 31 ..... $ 9,943.33

May 13, Robert E. Westcott check drawn on the Importers & Traders National Bank, New York, favor Kellogg, Rose & Smith, Exhibit 422, Parsons, ... $13,997.01

1899.

Oct. 4, Received from J. H. Paul,—Currency Exhibit 27, Booth, applied to payment of Carter's fine, Vol. 10 P. 4969-72 ..... $ 5,000.00

1900.

Mch. 12, Received from I. S. Carter, on a/c O. M. Carter note $5,000, given for fees, Exhibit 27, Booth, Def. 45, Booth, Vol. 10 P. 4969-72 and 5011 ..... $ 500.00

June 29, Received from I. S. Carter on a/c O. M. Carter note, $5,000, given for fees, Coupons, Exhibit 27, Booth, Vol. 10 P. 4969-72 .. $ 4,500.00

1901.

Aug. 28, L. D. Carter, check on Oakland National Bank, favor Kellogg & Rose, Def. Exhibit 25, Booth, Govt. 27, Booth, ... $ 1,000.00
Vol. 10 P. 4863 and 4969-72

1902.

Feb. 25, From L. D. Carter, through H. G. Stone, Attorney, Exhibit 27, Booth, Vol. 10 P. 4969-72 $ 750.00

$82,555.96

False Entry on Carter's Annotated Account.

There was on bank statement of Carter's personal account in the Union Trust Company, an entry of two deposits in the account, as follows:

Dec. 28, 1897, ... $2,500.00

Feb. 7, 1898, ... $1,000.00

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On his annotated account, Exhibit 597, furnished by Carter to the Attorney General, he has noted in his own handwriting for each of the above.

"Borrowed of Mr. Rose, who was re-imbursed by Mr. Westcott."

And yet we see from the statement above, of receipts by

Kellogg and Rose, from what Carter claims were absolutely his own securities after October 11 and 29, 1897, that Kellogg & Rose had in their hands $36,865.62 of Carter's cash, before those deposits as annotated. Take this in connection with his other false annotations, "Collections remitted R. F. Westcott" and "Collections for Westcott," (*ante*, p. 831), and in connection with his further annotations on the same Exhibit, in reference to collections made in 1898, for "R. F. Westcott" of coupons on what Carter now claims were his wife's estate bonds (*ante*, pp. 633, 634), and there can be no doubt that Carter wilfully and purposely attempted to mislead the Attorney General, and to withhold from him, as he had before the Court Martial withheld, any information of Carter's possession and claim of title to the half million dollars of assets which he now claims was his after October, 1897. Carter admits he never told the Court Martial about that transaction (Wyman Vol. 3), p. 1701.

DELIVERY TO KELLOGG & ROSE OF SECURITIES, ETC., IN RECEIPT OF OCTOBER 29, 1897.

Mr. Henry L. Stimson testified (Wyman Vol. 9), p. 4611:

"Q. Was there anything said by Mr. Westcott at the time of the delivery of those securities as to making Captain Carter a present of these securities?

A. Nothing that I recall whatever. To make it more definite, there was not."

After further testifying (*ante*, p. 830) to the fact that Carter, after the delivery, offered to give Westcott some of the bonds, Stimson testified:

"Captain Carter put the bonds which he had referred to back with the others and took them all."

There is a letter in evidence, dated October 29, 1897, from H L. Stimson to Mr. Rose, Deft's. Exhibit 107 (Wyman Vol. 3), p. 1378, which reads:

"My dear Mr. Rose:

I enclose draft of memorandum. The proposed receipts are so long that they will not be finished until later but are in same form as last one.

Yours truly,

H. L. STIMSON.

Oct. 29, 1897"

It is evident that the draft of "memorandum" referred to was the "memorandum" of settlement of the Orange, N. J. property, Exhibit 283, signed by Westcott and Carter at the same time of signing the receipt Oct. 29, 1897.

Carter testified (Wyman Vol. 3), p. 1330:

"A. No, sir. Mr. Rose was present when I receipted for them.

Q. He was present when the securities were delivered?

A. Yes, sir.

Q. Then you say he carried them over to his office?

A. Well, I do not know that I can recall whether the bag was in his hands or in mine, but they were taken over to his office.

Q. Then you left these securities a while with Mr. Rose?

A. I think they were in Mr. Rose's possession till they were turned over to Mr. Robert E. Westcott some time in the summer of 1898."

IN R. E. WESTCOTT'S HANDS.

It appears from Exhibit 400 (Parsons) that R. E. Westcott collected on May 16, 1898, just after the Court Martial trial, $11,630.00 of coupons from these securities, the collection of which had been in arrears from the beginning of the Board of Inquiry proceeding in September, 1897, until this time.

P. 840. Note

*Carter testified that R. E. Westcott, his brother-in-law, suggested to him that Kellogg & Rose were helping themselves too liberally to the securities in their hands and upon that he, Carter, had them turned over to R. E. Westcott to hold. (Vol. 14, p. 6390.)

IN J. H. PAUL'S HANDS.

R. E. Westcott made sundry collections and disbursements for Carter, from these assets, partly himself and partly through J. H. Paul, who it appears was a right hand man for R. E. Westcott. Finally the possession and control of the securities for Carter was either by Carter or by R. E. Westcott, with Carter's knowledge and consent, put completely in J. H. Paul. See Carter's cross-examination (Wyman Vol. 3), pp. 1183-4, and 1333-4. See also the Miss Olive Lewis letters and correspondence between her, J. H. Paul and O. M. Carter put in evidence by defense before Booth, special Master.

Vol. 13 P 6047-8 and 6145-69

Vol. 10 P 5109 et seq and Vol 10 P 5033

During the period up to May 23, 1900, J. H. Paul sold off a large number of these securities listed in the October, 1897, receipts, through brokers in New York, to-wit:

Kerr & Co. (Exhibit 401, Parsons), S. C. Millett (Exhibit 402, Parsons), and Tracy & Co. (Exhibit 403, Parsons), and kept deposits of the proceeds in his own name in the Peoples Trust Co., of Brooklyn (Exhibit 406, Parsons), and Kings County Bank, Brooklyn (Exhibit 408, Parsons), and Trust Co. of America (Exhibit 410, Parsons).

All in Vol. 28

J. H. Paul also re-invested the proceeds not otherwise expended in other stocks and bonds, through the broker's accounts above referred to.

J. H. PAUL DELIVERS THE SECURITIES TO I. S. AND D. P. CARTER.

Greene and Gaynor were arrested in New York in December, 1899, and the hearing for their removal to Georgia was commenced in January, 1900.

O. M. Carter was under arrest at Governors Island from September 29, 1899, the date of the confirmation of his sentence, until he was removed to the penitentiary at Fort Leavenworth, Kansas, April 25, 1900 (Wyman Vol. 3), p. 1332.

Vol 13 P 6145

On May 23, 1900, J. H. Paul turned over the securities in his hands, including the reinvestments and old securities not sold, to two of Carter's brothers, I. Stanton Carter of Chicago, and D. P. Carter of Huntington, West Virginia. O. M. Carter testified on cross-examination (Wyman Vol 3), p. 1333:

"Q. You authorized your two brothers to get those securities?

A. I did."

List of Securities Joint Receipt, May 23, 1900.

Complt's Exhibit 3 (Booth) Vol. 10 4901-3

I. Stanton Carter and D. P. Carter to J. H. Paul.

5 M, Chesapeake & Ohio,	5% Bonds.
10 M, Chicago, St. P., Minn. & Om.,	6% Bonds.
15 M, Delaware & Hudson, Pa. D. W.,	7% Bonds.
30 M, N. Y., Lackawanna & Western,	6% Bonds.
5 M, Wabash, Detroit & Chicago, Ex.,	5% Bonds.
50 M, Long Dock,	6% Bonds.
10 M, Morris & Essex,	7% Bonds.
20 M, N. Y., Lackawanna & Western,	5% Bonds.
15 M, Chicago & North-Western,	7% Bonds.
5 M, N. J. Junction,	4% Bonds.
10 M, Mil., Lake Shore & Western,	6% Bonds.
5 M, Joliet & No. Indiana,	7% Bonds.
10 M, Mo. Pacific,	6% Bonds.
10 M, Gen. Reading,	4% Bonds.
5 M, Hocking Valley,	4½% Bonds.
10 M, Wabash 2nds,	5% Bonds.
15 M, Chesapeake & Ohio,	4½% Bonds.
10 M, Peoria & Eastern,	4% Bonds.
300 shares, Baltimore & Ohio Preferred.	
100 shares, Hocking Valley Preferred.	
80 shares, Tow Boat Co. Stock.	

25 shares, Savannah Brewing Co. Stock.
99 shares, Hunting Island Land Co. Stock.
1 share Greenwich Park Association Stock.
5 shares, Savannah Cotton Mill Stock.
25 shares, Seaboard Co. Stock.
15 shares, Savannah Lighterage Co. Stock.

A. M. Stein, note,	$ 2,000
Thomas Martin, note,	$ 6,000
T. M. Cunningham, notes,	$10,275
B. Gordon, notes,	$11,200
John Lyons, Mortgage,	$15,000

The full tracing of the sales of the securities made by J. H. Paul from the original securities listed in the receipts of October 11 and October 29, 1897, and reinvestment into the new securities, constituting a part of those listed on the I. Stanton Carter and D. P. Carter receipt of May 23, 1900, was put in proof before Special Master Booth, and the fact of the tracing back of all these securities to the securities (or proceeds thereof) purchased as shown on Exhibit 319 has been passed on by the master, and is not now in dispute.

Of course, the question of whether the original securities were purchased from Greene & Gaynor funds is disputed by the defendants.

I. STANTON CARTER AND D. P. CARTER DIVIDE THE SECURITIES.

The securities received from J. H. Paul were brought to Chicago, and put in a box in Safety Deposit Company, in Columbus Memorial Building, which box was taken by I. Stanton Carter in the name of "Isaac Carter." Cross-examination of I. Stanton Carter (Booth Rec.), p. 264. Vol. 10, 1490-1

The securities were shortly afterward divided between I. Stanton Carter and D. P. Carter, and the latter took about $165,000 par value of the stocks and bonds to Huntington,

West Virginia. See Affidavit D. P. Carter, Exhibit 17 (Booth), and cross-examination of I. S. Carter before Booth. Vol. 10 p. 4795 et seq.

I. Stanton Carter Proceeds to Convert Securities Into Cash.

I. Stanton Carter then proceeded to sell, reinvest, or convert into cash the main part of the securities retained by him in Chicago.

He took out another safety box in the National Safe Deposit Co., Chicago, in the name of Stanton Carter. I. Stanton Carter testified on cross-examination (Booth, p. 96) that from November 23, 1900, he carried about $46,356.25 in these vaults, until he contributed $14,884.25 from it toward the purchase of 21 Kentucky Central Bonds.

Carter Mortgages the Eighth Avenue Property.

In the meantime, with these large amounts of cash in I. Stanton Carter's hands, O. M. Carter mortgaged, on Oct. 8, 1900, the Eighth avenue property for $23,000, at 4½ per cent. interest, to the American Mortgage Co. of New York. The check for the net proceeds, $22,005.27, was dated Nov. 2, 1900, and bears the endorsement of O. M. Carter, Exhibit 6 (Booth). The check was deposited in the account of Frank P. Blair, Carter's attorney, in the Northern Trust Co., Chicago, and $20,000 of the proceeds accounted for by him to I. Stanton Carter. (See statement of the account by Special Master Booth.)

O. M. Carter Deeds the Eighth Avenue Property to L. D. Carter.

On November 15, 1900, O. M. Carter made a deed to the Eighth avenue property (Equity of Redemption) to L. D. Carter for an alleged consideration of $10,000.

Orange, New Jersey, Property Conveyed to F. P. Blair.

On October 23, 1900, O. M. Carter, by I. Stanton Carter, Attorney, conveyed Carter's Orange, N. J., property to F. P. Blair. (Exhibit 429, Parsons.) Vol. 10 P 4665

Orange, New Jersey, Property Conveyed to L. D. Carter.

On January 25, 1901, O. M. Carter, by I. Stanton Carter, Attorney in fact, conveys Carter's Orange, N. J. property to L. D. Carter, for consideration $100. Exhibit 430 (Parsons). Vol. 10 P 4669

Orange, New Jersey, Property Conveyed to I. Stanton Carter.

On May 15, 1901, F. P. Blair conveys the Orange, N. J., property to I. Stanton Carter. Exhibit 431 (Parsons) Vol. 10 P4

Sales of Securities in Chicago.

Of the securities which I. Stanton Carter had retained in Chicago, he had Frank P. Blair, in May and September, 1900, sell off $43,320 through Slaughter & Co., Exhibit 7 (Booth), and Knight, Donnelly & Co., Exhibit 10 (Booth). L. D. Carter sold off in September and October, 1900, securities amounting to $25,152.14 through banks at Charleston, Ill., and Oakland, Ill., and through J. H. Harris, Broker, Chicago. Exhibits 9, 11, 12 and 13 (Booth). Vol. 10 P 4931-6-4935-7-4937

I. S. Carter sold off, Exhibit 5 (Booth), through J. F. Bragg, New York, $5,233.75 of securities October 5, 1900.

Reinvestments.

There were some reinvestments made by I. Stanton Carter and L. D. Carter, but a large part of the proceeds of these sales have never been accounted for by I. Stanton and L. D. Carter, and the questions as to that are before the Court on exceptions to the Master's report, as to the allowance of $19,666.66 of salaries to I. S. Carter and L. D. Carter. Also for the amount the Master reported that they had not accounted for in excess of the salaries claimed. The Court reversed the Master, so far as to require the L. D. and I. S. Carter turn over to the receiver the 22 M, Kentucky Central Bonds, and 1 M, Michigan Telephone bond, which they had withheld from the receiver, reserving the question of salary for final decree.

WEST VIRGINIA SALES.

D. P. Carter, through a lawyer of Huntington, W. Va., Rufus Switzer, sold off $146 902.08 worth of the O. M. Carter securities, the sale having been made through the Kanawha Valley Bank of Charleston, W. Va., October and November, 1900. Exhibit 450 (Wyman). Most of the proceeds consisted of gold certificates. There were nine certificates of denomination of $10,000 each. The bank was requested by Switzer to obtain the gold certificates.

BONDS SOLD EX-COUPONS.

A large number of the bonds sold off by I. Stanton and D. P. Carter had the coupons clipped off ahead of their maturity, and the bonds were sold ex-the-coupons. See testimony before Booth, Master.

P. 846. Note

*The statement of the accounts of I. S. Carter and of L. D. Carter with the trust funds which went into their hands appears fully in the proceedings before W. M. Booth, Master, and the exceptions to the master's report and the assignments of error on such parts of the findings of the master, affirmed by the local court as is excepted to.

CHANGES IN INVESTMENTS MADE BY J. H. PAUL.

Certain Deposits from the Trust Fund Made by J. H. Paul in Peoples Trust Co. Brooklyn.

May 18, '98.	Sale through Kerr & Co. (Ex. 401, Vol. 28) 3M Morris & Essex (from Div. 19) proceeds deposited (Exh. 406)	$ 3,145.75
June 8, '98.	Deposit of coupons (Exhs. 406 and 407, Vol. 28)	1,000.00
June 17, '98.	Sale through Kerr & Co. (Ex. 401) 4M U. S. coupon bonds (from Div. 19) proceeds deposited	4,455.00
July 7, '98.	Deposit of coupons (Exh. 406 and 407)	1,900.00
July 11, '98.	Deposit of coupons (Exh. 406 and 407)	175.00
July 11, '98.	Deposit check R. E. Westcott trust funds in his hands turned over to Paul (Ex. 408 and 422)	10,000.00
Aug. 1, '98	Deposit coupons (Exh. 406 and 407)	862.50
Nov. 7, '98.	Deposit coupons (Exh. 406 and 407)	687.50
Dec. 5, '98.	Deposit coupons (Exh. 406 and 407)	1,700.00
Jan. 4, '99.	Deposit coupons (Exh. 406 and 407)	2,075.00
Feb. 1, '99.	Sale through Nat. Bk. Sav. (Ex. 419), 50 shares Brush E. stock (from Divs. 26, 27, 28, 30) proceeds deposited (Ex. 406)	4,500.00
Feb. 8, '99.	Sale through S. C. Millett (Exh. 402) 15M N. Y. Central 1st bonds proceeds deposited (Exh. 406)	17,643.75
Feb. 8, '99.	Deposit of coupons (Exh. 406)	862.50
Mch. 2, '99.	Deposit of coupons (Exh. 406)	1,125.00
Apr. 4, '99.	Deposit of coupons (Exhs. 406 and 407)	1,500.00
May 16, '99.	Deposit of coupons (Exh. 406)	987.50
June 2, '99.	Deposit of coupons (Exh. 406)	1,350.00
July 7, '99.	Deposit of coupons (Exh. 406)	1,550.00
July 17, '99.	Deposit rents Orange (Exh. 406)	245.83
Aug. 7, '99.	Deposit coupons (Exh. 406)	862.50
Aug. 7, '99.	Deposit rents Orange (Exh. 406)	170.83
		$56,798.66

Certain Investments made by J. H. Paul with the Trust Funds by Checks on Peoples Trust Co. of Brooklyn.

June 28, '98.	Check for the 4th premium on Carter's life policy No. 743,543 (Exh. 406)	453.00
Feb. 15, '99.	Bought through S. C. Millett (Exh. 402) 10M Mo. Pac. 6s bonds check on Peoples Trust Co. (Exh. 406)	$11,396.25

The above 10M Mo. Pac. bonds are included in receipt of May 23, 1900, I. S. & D. P. Carter to Paul. (*Ante*, p. 842.)

Certain Deposits from the Trust Fund Made by J. H. Paul in Kings Co. Bank, Brooklyn.

Oct. 19, '99.	Deposit of check R. E. Westcott trust funds in his hands turned over to Paul (Ex. 408 and 422, Vol. 28),	$ 8,775.00
Oct. 19, '99.	Deposit check for proceeds of coupons collected through Trust Co. of America (Exhs. 408 and 410)	$2,425.00
Oct. 19, '99.	Deposit rents Orange (Exh. 408)	491.66
Nov. 4, '99.	Deposit coupons (Exh. 408)	987.50
Nov. 6, 99.	Deposit rents Orange (Exh. 408)	245.83
Nov. 6, '99.	Deposit, difference paid by R. F. Westcott on partition Orange property (Ex. 408, Parsons, Ex. 598 and 621 Wyman)	7,953.22
Nov. 22, '99.	Deposit rent 8th avenue (Ex. 408 and 421)	412.51
Dec. 13, '99.	Deposit coupons (Ex. 408 and 409)	1,350.00
	Deposit rents Orange (Exh. 408)	245.83
Dec. 14, '99.	Deposit rent 8th avenue (Exh. 408 and 421)	200.00
Jan. 3, 1900.	Deposit coupons (Exh. 408 and 409)	1,375.00
Jan. 5, 1900.	Deposit coupons (Exhs. 408 and 409)	200.00
Jan. 5, 1900.	Deposit rent Orange (Exh. 408)	245.83
Feb. 1, 1900.	Deposit coupons (Exh. 408 and 409)	937.50
Feb. 1, 1900.	Deposit interest notes Cunningham & Gordon (Exh. 408)	575.00
Feb. 1, 1900.	Deposit rent 8th avenue (Exh. 408 and 421)	187.10
Feb. 7, 1900.	Deposit rent Orange (Exh. 408)	305.83
Feb. 16, 1900.	Deposit rent 8th avenue (Exhs. 408 and 421)	200.00
Mch. 9, 1900.	Deposit coupons (Exhs. 408 and 409)	1,325.00
Mch. 9, 1900.	Deposit rent Orange (Exh. 408)	301.33
Mch. 24, 1900.	Deposit rent 8th avenue (Exhs. 408 and 421)	161.81
Apr. 3, 1900.	Deposit check proceeds coupons (Exhs. 408 and 410)	300.00
Apr. 3, 1900.	Deposit coupons	1,200.00
Apr. 3, 1900.	Deposit rent Orange (Exh. 408)	245.83
Apr. 4, 1900.	Deposit rent Orange (Exh. 408)	60.00
Apr. 4, 1900.	Sale through Tracy & Co. (Ex. 403) 10M Chi., M. & St. P. bonds from Div. 6, 20M Lake S. & M. So. bonds from Divs. 12, 14, 15, proceeds deposited (Exh. 408)	39,812.50
Apr. 10, 1900.	Sale through Tracy & Co. (Ex. 403) 30M United N. J. bonds (Exh. 403), proceeds deposited (Exh. 408)	34,800.00
Apr. 24, 1900.	Deposited rent 8th avenue (Ex. 408 and 421)	236.08
May 8, 1900.	Deposited rent Orange (Ex. 408)	305.83
May 12, 1900.	Deposited rent 8th avenue (Ex. 408 and 421)	200.00
		$106,061.19

Transfer by J. H. Paul to Carter's Credit.

June 5, '99.	Check of J. H. Paul on Peoples Trust Co. Brooklyn (Exhibit 406) to Carter's credit in U. T. Co. (Exh. 597)	$1,323.00

Payment of Insurance Premium.

June 6, '99.	Check of Carter on U. T. Co. for 5th premium on life insurance policy	$453.00

Certain Investments Made by J. H. Paul, with the Trust Funds by Checks on Kings Co. Bank, Brooklyn.

Nov. 8,'99.	Check to S. C. Millett (Ex. 402 and 408, Vol. 28), for 10M Gen. Reading 4% bonds		$ 8,703.75
Feb. 1, '99.	Check to Tracy & Co. (Exh. 403 and 408) for 5M Hocking Valley 4½% bonds		4,987.50
Apr. 10, '99.	Checks to Tracy & Co. (Exh. 403 and 408) for 100 shares B. & O. preferred stock		8,450.00
	For 10M Wabash 2nd 5% bonds		10,357.50
1900			
Mch. 13.	Check for investment Stein note (Ex. 408)		2,000.00
Apr. 12.	Check to Tracy & Co. (Exh. 403 and 408) for 10M C. & O. 4½% bonds		9,987.50
	For 10M Peo. & E. Ill. 4% bonds		9,012.50
Apr. 23.	Check to Tracy & Co. (Exh. 403 and 408) for 3 M C. & & O. 4½% bonds		2,996.25
Apr. 24.	Check to Tracy & Co. (Exh. 403 and 408) for 2M C. & O. 4½% bonds Nos. 2476–7	$1,997.50	
	For 5M C. & O. 4½% bonds Nos. 2478–82	4,993.75	6,991.25
Apr. 25.	Check to Tracy & Co. (Ex. 403 and 408) for 100 shares B. & O. preferred stock		8,512.50
Apr. 30.	Check to Tracy & Co. (Ex. 403 and 408) for 100 shares Hocking Valley Pfd. stock		6,789.50
May 9.	Check to Tracy & Co. (Ex. 403 and 408) for 100 shares B. & O. preferred stock		$8,012.50
			$86,800.75

All of the above re-investments of the trust fund were turned over by J. H. Paul to I. S. & D. P. Carter as per their receipt of May 23, 1900 (*ante*, p. 842), with the exception of the 5M C. & O. bonds Nos. 2478 to 82, purchased Apr. 24, 1900, which 5 bonds J. H. Paul appears to have retained.

Besides the above investments made by J. H. Paul from the trust fund in the Kings Co. bank, which J. H. Paul turned over in the receipt of May 23, 1900, he drew out other large sums for various purposes until on June 28, 1900, there was left of it a balance of $1,889.82, exclusive of certain interest credits allowed by the bank.

Out of this balance Paul paid the premiums of $453.00, due June 19, 1900, on Carter's life insurance policy in the Equitable. (See agreement, Vol. 10, p. 5033.)

Certain transactions with the trust funds made by J. H. Paul in connection with I. S. Carter subsequent to the delivery of the securities to I. S. Carter and D. P. Carter May 23, 1900:

July 20, 1900. Bought by J. H. Paul through Tracy & Co. (Exh. 403 and 410, Vol. 28), 5M B. & O. 4% bonds. Paid for by check on Trust Co. of America. $5,006.25

How paid for:

July 13, 1900. Collection by J. H. Jaul of Stein's note (Dfts. Exh. 54, Vol. 10, p. 5016), and testimony of I. S. Carter (Vol. 10, p. 4759) $2,040.00

July 19, 1900. Deposit bills to J. H. Paul's credit in Trust Co. of America (Exhibit 410, Vol. 28) 3,000.00

$5,040.00

I. S. Carter testified that he had paid to J. H. Paul towards this purchase cash, he thinks, $4,000. (Vol. 10, p. 4759.) He was uncertain of the exact amount. (Vol. 10, p. 4766.)

I. S. Carter had previously received in cash through F. P. Blair May 29, 1900, $5,750 from proceeds of sale of trust fund securities. (Vol. 10, p. 4957.) I. S. Carter had also had cashed by J. H. Paul $1,062.50 of coupons and dividends. (Dft. Ex. 54, Vol. 10, p. 5016.)

The above 5M B. & O. bonds were afterwards sold by I. S. Carter through F. P. Blair. (Vol. 10, p. 4958.)

CARTER'S ALLEGED LETTER TO PRESIDENT McKINLEY, JUNE 17, 1901.

Carter produced before Examiner Wyman, Jan. 1, 1905, what purported to be a letter from himself to President McKinley. Deft's Exhibit 101, Wyman, in which, after stating his grievances, he says: Vol. 18 P6588-90

> "I therefore address your Excellency not to ask any favor, but to beg for simple justice, to beg for an opportunity which I have never had, and which your Excellency can grant—that of determining in a court of justice, where there is power to compel the testimony both of soldiers and of civilians and whose decisions none may question, whether the unproven assertions of my guilt, upon which I have been condemned, are true or false."

Counsel for defendant gave counsel for complainant notice to produce the original of this letter. The response of the Executive Office, as well as of the Department, is in evidence, and is that there is no such letter on file. (Wyman Vol. 3) Vol 14 P6590 et p. 2048 et seq.

The Jeremiah Wilson Letter to the Attorney General, July 10, 1901.

Vol 14 P6594

Deft's Exhibit 102, Wyman, is a letter from Jeremiah Wilson, one of Carter's attorneys, to the Attorney General, dated July 10, 1901. In this letter the writer states: Vol 14 P6595

> "So these two modes of getting at the truth of this matter are open to the Government:
> (a) try him on the indictment and
> (b) sue him for the money."

It will be observed that all that is suggested here is (a) to try a man already convicted by a competent tribunal and serving his sentence, over again, and (b) to bring a civil common law action to get a judgment against a man who had placed all his property beyond the reach of a judgment so far as he was able to do it.

POOR COPY

In fact there is no suggestion that Carter had any property or that the Government bring an equity suit to test his ownership. Counsel for defendant, Mr. Stone, has suggested that the first bill filed by the Government, July 30, 1901, was the result of the above two letters. The suggestion is ridiculous.

HOW THE SECURITIES WERE TRACED.

The final order of Judge Brown for the removal of Greene and Gaynor to Georgia, from New York, was made March 21, 1901, and then the case went on *habeas corpus* to the Supreme Court. Vol. 23 P 10467 May 23 Vol. 23 P 10467

The record will show the present solicitor for the complainant conducted the proceeding in New York as Special Assistant to the District Attorney of the Southern District of New York.

It will also show that it was in that New York proceeding that the Government for the first time was able to prove exactly the property into which Carter had converted the embezzled funds. That most of the investments had been made in un-registered bonds; that while the bankers and brokers accounts showed the serial number of these securities, they were in the main negotiable securities which could pass by hand; that the last possession of these securities shown ended with the receipts of October, 1897, when Westcott delivered them to Carter.

Carter was in the penitentiary, and, of course, did not have them there. Carter had conveyed away the real estate. In this state of the proceedings the Court will take judicial notice of the date of the letter of the Attorney General, June 26, 1901, appointing the present solicitor for complainant, Special Assistant to the Attorney General, for the purpose of instituting suits against Carter, Greene and Gaynor, to recover the embezzled funds. It appears in the register of the Department of Justice.

What was done by Mr. Edward I. Johnson and myself to

trace the securities is then told in the following testimony of Mr. Edward I. Johnson (Wyman Vol. 1), p. 97: Vol. 11 05165

"Q. State what was done by you or by me with your knowledge in order to trace the then situation of these securities described on those Westcott receipts, of which you then had no knowledge of the location?

A. I left a memorandum with the various companies in relation to the coupon periods, the next coupon periods to the various securities, and asked them to notify us when they were presented and by whom they were presented, keeping a memorandum of them.

Q. State whether or not in pursuance of the notice you gave the Delaware & Hudson Railroad Company you did after a time receive a notice from the Delaware & Hudson Railroad Company which caused you to visit their office in New York?

A. I did.

Q. When you visited there did you find anything in reference to any of these Delaware & Hudson bonds described by number on this, what we call the ninth division, Exhibit 319?

A. They had preserved a memorandum of the party who had presented a few of these bonds to be registered.

Q. They had the bonds there for registration?

A. They had the bonds there for registration.

Q. In pursuance of the information that you then got from the Delaware & Hudson Railroad Company, did you visit the broker who had these bonds for registration at the Delaware & Hudson Railroad Company?

A. I did.

Q. Did you get any information from that broker relative to the purchase by him of these bonds that had been presented for registration?

A. I did.

Q. Did you then, in pursuance of that information, make inquiry of the next broker from whom that broker had purchased the bonds?

A. I did.

Q. And so on did you trace back those bonds through several different brokers in New York?

A. I did.

Q. Where did you finally trace these particular Delaware & Hudson bonds as being put on the market in New York, to what concern?

A. To the National Citizens' Bank of New York.

Q. Did you get certain information from the National Citizens' Bank of New York as to the purchase of those bonds as to the receipt of those bonds for marketing, from any other source?

A. I did.

Q. That information let you where?

A. To the Kanawha Valley Bank, Charleston, West Virginia.

Q. Did you visit the Kanawha Valley Bank at Charleston, West Virginia?

A. I did.

Q. I was with you on that visit?

A. You were.

Q. In pursuance of inquiries there made, did you get certain information from them?

A. I did.

Q. Is that information set forth in the Exhibit 450 in this cause? Vol 29

A. It is.

Q. Mr. Johnson, in that Exhibit 450, which is the verified account of the Kanawha Valley Bank, there is shown a sale by that bank for account of Rufus Switzer in October, 1900, of two lots of Delaware & Hudson Railroad bonds aggregating $15,000 par value, and including the bonds with the same numbers on them as these ten bonds in this Division 9, is there not? Vol 29

A. Yes, sir.

Q. And also a sale at the different dates marked in there, in 1900, on that account of other securities aggregating $146,902.08?

A. Yes, sir.

Q. It also appears in the affidavit of the cashier admitted in evidence that there were turned over to said Rufus Switzer, as the proceeds of sales of bonds therein described, nine gold certificates of the denomination of ~~$1,000~~ $10,000 each and other gold certificates of less denomiination. I ask you whether or not after obtaining the information which is set out in that affidavit, to your knowledge I instituted the proceeding by filing the bill in West Virginia against Rufus Switzer, Ditson P. Carter?

A. You did.

Q. After the bill was instituted, were certain proceed-

ings had resulting in your assisting the Receiver in taking actual possession of a large amount of securities and gold certificates in Huntington, West Virginia?

A. Yes.

Q. Are those matters set forth in that affidavit, Exhibit 432? Vol 28

A. They are.

Q. Did you assist the Receiver in counting the gold certificates found?

A. I did.

Q. Where were they found?

A. They were found in the possession of D. P. Carter.

Q. Where?

A. In the bank vault, at Huntington, West Virginia, the First National Bank.

Q. Did the Receiver then obtain possession from Ditson P. Carter of any other securities which are described in the Westcott receipts?

A. He did.

Q. A list of them will appear on Exhibit 432, will it not? Vol. 28

A. It will."

HOW THE CHICAGO SECURITIES WERE FOUND.

After the West Virginia securities and proceeds were corralled, the record of this Court will show how the securities in Northern and Southern Districts of Illinois were traced and finally brought into the custody of the Receiver of this Court. It will show that after I. Stanton Carter and D. P. Carter were served with process, and the Receiver demanded custody of the securities traced into their possession they denied having the custody or control of them. That a rule for contempt was served upon them and was pending in Court. That a motion was made by complainant's solicitor, to appoint a Special Master to take off the accounts of Frank P. Blair in two Chicago banks, the transactions in

which he had deposited the proceeds of the Carter securities sold by him, and to show the disposition he had made of the fund.

The presiding Judge knows that on the hearing of that motion complainant's solicitor produced the receipt given by I. Stanton Carter and D. P. Carter to J. H. Paul, with the affidavit of J. H. Paul attached. Exhibit 3 (Booth). That upon the ruling of the Court, but before order entered, Mr. Blair waived further objection and consented to allow the inspection of his accounts. That this was followed by the agreement between the parties made by their respective solicitors, Nov. 6, 1906, under which I. Stanton Carter and L. D. Carter were to surrender to the Receiver all the securities in their power and control, at the date of the Receiver's appointment. That they only surrendered a part, and that on a reference to Mr. Booth they surrendered under his decision 10 Kentucky Central bonds, and on exceptions to the Master's report they surrendered on the decision of the Court 12 more Kentucky Central bonds and 1 Michigan Telephone Co. bond.

The balance of the un-invested fund traced to them as found by the Master they have never accounted for.

MARION ERWIN,
Special Assistant to the Attorney General,
Complainant's Solicitor.